

**AGENDA  
REGULAR MEETING  
CITY OF BANNING  
BANNING, CALIFORNIA**

October 22, 2013  
**5:00 p.m.**

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

*The following information comprises the agenda for a regular meeting of the City Council and a joint meeting of the City Council and the Banning Utility Authority.*

*Per City Council Resolution No. 2010-38 matters taken up by the Council before 9:00 p.m. may be concluded, but no new matters shall be taken up after 9:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.*

**I. CALL TO ORDER**

- . Invocation – District Elder Preston Norman Jr., Praise Tabernacle Community Church
- . Pledge of Allegiance
- . Roll Call - Councilmembers Botts, Miller, Peterson, Welch, Mayor Franklin

**II. REPORT ON CLOSED SESSION**

**III. PUBLIC COMMENTS/CORRESPONSENCE**

**PUBLIC COMMENTS – On Items Not on the Agenda**

A five-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. (Usually, any items received under this heading are referred to staff for future study, research, and appropriate Council Action.) See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

**CORRESPONDENCE:** Items received under the category may be received and filed or referred to staff for future research or a future agenda.

*The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.*

#### **IV. CONSENT ITEMS**

*(The following items have been recommended for approval and will be acted upon simultaneously, unless a member of the City Council wishes to remove an item for separate consideration.)<sup>6</sup>*

**Motion: That the City Council approve Consent Item 1 through 8**

**Items to be pulled \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ for discussion.**

*(Resolutions require a recorded majority vote of the total membership of the City Council)*

1.	Approval of Minutes – Special Meeting – 10/08/13 (Closed Session) .....	1
2.	Approval of Minutes – Regular Meeting – 10/08/13 .....	2
3.	Approval of Minutes – Special Meeting – 10/15/13. ....	30
4.	Resolution No. 2013-92, Adopting the American Public Power Association’s Safety Manual (15 <sup>th</sup> Edition) as the Official Safety Manual to be use by the City of Banning’s Electric Utility. ....	34
5.	Resolution No. 2013-99, Approving the Banning Electric Utility Power Content Label. ....	38
6.	Resolution No. 2013-101, Authorizing the Purchase of One (1) 2013 Glaval universal CNG Powered Dial-A-Ride Bus from A-Z Bus Sales Utilizing the California association for Coordinated Transportation (CALACT) Competitive Bid Award for a Total of \$112,487 .....	41
7.	Report of Investments for July 2013 .....	45
8.	Report of Investments for August 2013. ....	51

- **Open for Public Comments**
- **Make Motion**

#### **V. PUBLIC HEARING**

*(The Mayor will ask for the staff report from the appropriate staff member. The City Council will comment, if necessary on the item. The Mayor will open the public hearing for comments from the public. The Mayor will close the public hearing. The matter will then be discussed by members of the City Council prior to taking action on the item.)*

1.	Ordinance No. 1472, Adoption of the Latest Editions of California Building, Residential, Green Building Standards, Plumbing, Mechanical and Electrical Codes	
	Staff Report .....	57
	Recommendation: That the City Council introduce the first reading Ordinance No. 1472 and schedule the second reading of the Ordinance for the November 12, 2013 City Council Meeting.	

**Mayor asks the City Clerk to read the title of Ordinance No. 1472:**

*“An Ordinance of the City Council of the City of Banning, California, Amending Chapter 15.08 of the Banning Municipal Code by Adopting By Reference the entirety of the Latest California Building Code, Residential Code, Green Building Standards Code, Plumbing Code, Mechanical Code, and International Property Maintenance Code, All As Relative to Construction Codes.*

**Motion: I move to waive further reading of Ordinance No. 1472.**

(Requires a majority vote of Council)

**Motion: I move that Ordinance No. 1472 pass its first reading.**

**VI. REPORTS OF OFFICERS**

1. Ordinance No. 1473, Repealing and Replacing Section 2.04.040 of the Banning Municipal Code Relating to City Council Vacancies.  
Recommendation: That the City Council adopt Ordinance No. 1373 ..... 70

**Mayor asks the City Clerk to read the title of Ordinance No. 1473:**

*“An Ordinance of the City Council of the City of Banning, California, Repealing and Replacing Section 2.04.040 of the Banning Municipal Code Relating to City Council Vacancies in Order to Conform With California Government Code section 36512.”*

**Motion: I move to waive further reading of Ordinance No. 1473.**

(Requires a majority vote of Council)

**Motion: I move that Ordinance No. 1473 take effect immediately.**

2. Update from TMD (Transport Management & Design, Inc.) Regarding Transit.  
Staff Report ..... 72

3. Resolution No. 2013-91, Approving the Award of a Professional Services Agreement to Aragon Geotechnical, Inc. for Robertson's Mine Reclamation Plan Review and Inspection Services.  
Staff Report ..... 73

**Recommendations: That the City Council adopt Resolution No. 2013-91, Awarding a Professional Services Agreement to Aragon Geotechnical, Inc. Inc. of Riverside, California, in an amount “Not to Exceed” \$32,040.00 for Robertson's Mine Reclamation Plan Review and Inspection Services.**

4. Resolution No. 2013-97, Awarding the Construction Contract for Project No. 2013-03, Construction of Parking Lot Improvements at Lions Park and Repplier Park and Rejecting all Other Bids  
Staff Report ..... 112

**Recommendations: That the City Council:**

**I) Adopt Resolution No. 2013-97, Awarding the Construction Contract for Project No. 2013-03, Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12) to Avi-Con, Inc. dba CA Construction of Riverside, CA, for an amount of “Not to**

Exceed" \$627,000.00 and authorize an additional 10% contingency of \$63,000.00 to cover any unforeseen project conditions.

III) Approving the Professional Services Agreement with HP Engineering of Redlands, CA, for Engineering Staking Services for an amount of "Not to Exceed" \$15,000.00.

III) Authorizing staff to request an advance in the City's future Community Development Block Grant (CDBG) funding and the reprogramming of unused CDBG funds to Project No. 2013-03, Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12) in order to cover the funding shortfall.

IV) Authorizing the Administrative Services Director to make the necessary budget adjustments and appropriations for this project.

V) The City Manager is authorized to execute the contract agreement with Avi-Con Inc., dba CA Construction of Riverside, CA, and the Professional Services Agreement with HP Engineering of Redlands, CA, for Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)." This authorization will be rescinded if the contract agreements are not executed within forty-five (45) days of the date of this resolution.

**RECESS REGULAR CITY COUNCIL MEETING AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL THE BANNING UTILITY AUTHORITY.**

**VII. REPORTS OF OFFICERS**

1. Resolution No. 2013-19 UA, Approving the First Amendment to the Professional Services Agreement for the Whitewater Flume Restoration Project with Roby McDonald, Environmental and Regulatory Consultant.  
Staff Report ..... 123

**Recommendation:** That the Banning Utility Authority adopt Resolution No. 2013-19 UA, to Approve the First Amendment to the Professional Services Agreement with Roy McDonald, Environmental and Regulatory Consultant in an amount of \$88,435.00 for additional professional services related to the Whitewater Flume Restoration Project for a total contract amount "Not to Exceed" \$168,035.00 as per attached Exhibit "J".

**Adjourn Joint Meeting and reconvene the regular City Council Meeting.**

**VIII. ANNOUNCEMENTS/REPORTS *(Upcoming Events/Other Items if any)***

- City Council
- City Committee Reports
- Report by City Attorney
- Report by City Manager

## **IX. ITEMS FOR FUTURE AGENDAS**

New Items – None

### Pending Items

1. Schedule Meetings with Our State and County Elected Officials (*Sept./Oct.*)
2. Workshop Regarding Future of Airport
3. Report on Moving Station 20 back to original firehouse. (*wait for new Battalion Chief*)
4. Discussion on how to handle loans or distributions to charities.
5. Discussion on how the City Council handles gifts to the City.
6. Open House: 5 to 7 p.m. – Wed. October 30<sup>th</sup> – Open to Public

## **X. ADJOURNMENT**

*Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 7 a.m. to 5 p.m.*

**NOTICE:** Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

**In compliance with the Americans with Disabilities Act**, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

10/08/13  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on September 16, 2013 at 4:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller  
Councilmember Peterson  
Councilmember Welch  
Mayor Franklin

COUNCIL MEMBERS ABSENT: Councilmember Botts

OTHERS PRESENT: Andrew J. Takata, City Manager  
David J. Aleshire, City Attorney  
June Overholt, Administrative Services Director  
Colin Tanner, Deputy City Attorney  
Marie A. Calderon, City Clerk

CLOSED SESSION

City Attorney said the items on the closed session agenda are two matters of potential litigation pursuant to the provisions of Government Code Section 54956.9; and conference with labor negotiators pursuant to Government Code Section 54957.6 and the negotiations are with Banning Police Officers Association (BPOA).

City Attorney said that they would like to add two existing litigation matters: 1) Fields vs. City of Banning; and 2) WRCOG vs. Beaumont. There have been developments in both of those cases that staff would like to relate to the City Council. The Council would need to find that the need to take action arose subsequent to the posting of the agenda.

Motion Welch/Miller to add these two items to the agenda and that the need to take action arose subsequent to the posting of the agenda. Motion carried, with one absent.

Mayor Franklin opened the item for public comments. There were none.

Meeting went into closed session at 4:02 p.m. and reconvened at 4:55 p.m. with no reportable action.

## ADJOURNMENT

By common consent the meeting adjourned at 4:55 p.m.

Marie A. Calderon, City Clerk

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

10/08/2013  
REGULAR MEETING

A regular meeting of the Banning City Council, a joint meeting of the City Council and the City Council Sitting in Its Capacity of a Successor Agency and the Banning Housing Authority; and a joint meeting of the Banning City Council and the Banning Utility Authority was called to order by Mayor Franklin on October 8, 2013 at 5:03 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Botts  
Councilmember Miller  
Councilmember Peterson  
Councilmember Welch  
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew J. Takata, City Manager  
June Overholt, Administrative Services Dir./Deputy City Manager  
David J. Aleshire, City Attorney  
Duane Burk, Public Works Director  
Leonard Purvis, Chief of Police  
Bill Manis, Economic Development Director  
Zai Abu Bakar, Community Development Director  
Fred Mason, Electric Utility Director  
Heidi Meraz, Community Services Director  
Phil Holder, Police Lieutenant  
John McQuown, City Treasurer  
Marie A. Calderon, City Clerk

The invocation was given by Mayor Pro Tem Botts. Councilmember Peterson led the audience in the Pledge of Allegiance to the Flag.

## REPORT ON CLOSED SESSION

City Attorney reported that the Council met in closed session a report was given on a case of potential litigation and staff went through the status of the labor negotiations with the Banning Police Officers Association and gave direction to the negotiators. Two items were added to the closed session agenda: 1) Fields vs. City of Banning; and 2) WRCOG (Western Riverside Council of Governments) vs. Beaumont and staff gave a status report on those matters and there was no reportable action taken. WRCOG has won an important victory against the City of Beaumont in terms of past fees that have not been paid by Beaumont so that was good news to relate to the Council.

## PUBLIC COMMENTS/CORRESPONSENCE/PRESENTATIONS/ANNOUNCEMENTS

### PUBLIC COMMENTS – On Items Not on the Agenda

Lyndon Taylor citizen of Banning addressed the Council stating that two weeks ago he came before the Council requesting answers to some questions related to the acquisition of a military vehicle. At that time he was assured by the Mayor that staff would prepare answers and give them to him. As of this moment he has not received any answers and he was told this morning that Mr. Takata's office has given the response that the matter is under investigation and they cannot provide the information. He is puzzled by this response because this is not a personnel issue, it is not a contract issue and nor is it involved in pending litigation. He sees no valid reason why these answers cannot be provided. It appears as if someone doesn't want to provide answers to some very basic questions that are of interest to a number of citizens. Is there is something here that we are trying to hide?

Joe Warren of Cherry Valley stated that he was here on behalf of the Banning Train Festival that is coming up to remind everyone that the event will be held here in town. There are a lot of people from out of town that have been putting this together and they have a real passion for the hobby of trains and are looking forward to the people of Banning participating, as well as the outlying communities. He hopes that the Council will get the word out about this Train Festival and make it a really good event. It will be held on October 19<sup>th</sup> and 20<sup>th</sup> from approximately 10 a.m. to 4 p.m. at the Banning Community Center and also at the old Banning gymnasium.

Bill Dickson with the Banning Police Department Volunteers addressed the Council stated that they are in need of more volunteers and they have just recently taken on another little job monitoring the cameras set-up through town and so far it has proved to be very beneficially. They are looking for people to volunteer not only to man the cameras but to also get involved with other police activities. He can be reached at 282-1138.

Barbara Hanna, Chair of the Banning Centennial Committee addressed the Council stating that the Train Festival is going to be fantastic and children 12 years old and under and free and over 12 years of age the cost is \$5.00 for both days. She invited the Council and the community at-large to the Banning Centennial Gala to be held on Saturday, Nov. 2<sup>nd</sup>. This will not be the end of the centennial year and they will continue to celebrate more events after that event. The Gala will be held at the Morongo Casino Ballroom and it is totally being underwritten by the Morongo Tribal Council of which they are very grateful and they are doing tremendous support of this effort and because of that the charge will only be \$35.00 per seat and she encourages the public to come out to this event. Check-in starts at 5 p.m. with the dinner and program starting promptly at 6 p.m. For attire they are encouraging people to wear turn-of-the-century dress but they are defining that very loosely and are also welcoming 1880's attire if you want to do old west. There are still sponsor tables available and all of the profits that evening will go to the creation of the "Banning Community Fund" so they really appreciate anything individuals or companies would like to do. You can buy your tickets online at [www.banning100birthday.com](http://www.banning100birthday.com) or mail it to the Cultural Alliance in Banning.

Susan Savolainen, 1610 W. Barbour addressed the Council stating that she wanted to focus on two things: 1) the housing element comments; and 2) the State of the City address. In regards to the housing element comments it was mentioned in the minutes and in the meeting that the citizens were for the downtown area only however, she and some others had also thought that Midway would be a good place to have the high density housing. There is absolutely nothing good looking at Midway other than a car dealership and an RV dealership otherwise it is an eyesore for the most part so putting in these nice four-story affordable housing units would actually be an improvement to Midway. Kudos to Habitat for Humanity for what they have been doing in the city and we need to see a whole lot more of that sort of thing going on. In regards to the State of the City address some things she would like to hear about are the following: 1) Banning Science & Technology Center; 2) What is happening in regards to that albatross on Lincoln Street that has now be tagged; 3) Banning Child Care Consortium; and 4) She would like to hear a call for a Citizen Advisory Committee/Board go out to the citizens of the city that the City of Banning is looking for community participation because there is so much that needs to be done and staff can only do so much.

Diane Smith, Lombardy Lane addressed the Council in regards to not getting answers. It has been a year and they have not heard anything about Robertson's. Piggy backing on the comments about the complex on Lincoln Street it is horrible and an eyesore. She suggested that the community get together and possibly use a dumpster that the City would pay for and get together as a group and go around and pickup these couches off the side of road. She is willing to do it but doesn't have a truck and doesn't have a big dumpster or the money to obtain that but she is willing to do it. She also read from an email from Bob Botts to Andy Takata asking why you are allowing the Banning quarry to continue to illegally operate. She said a mining report in 2012 said the mining is operating in violation of many laws and still does today. On many occasions she would call the City to complain and was ignored as if her complaints fell on deaf ears. The woman she often spoke with would act like she was a bother when she called and it wasn't important. For somebody that lives in Chino and drives here, of course it wouldn't be important because she doesn't live here. Does she blame her or not having enough knowledge or is it not enough staff. A correspondence she recently received explains why her and her many neighbors have complained over the years and nothing has been resolved. The City is full of corruption in certain areas and it has been stated over and over again in the Banning Informer which she believes to be true. The people mentioned in this email don't care at all that the residents are slowly dying from particles and respiratory illness from the quarry. She read from an email (Exhibit A) regarding the Banning Quarry. She wanted to know what was meant by that email and is there something that they should know. She wants to clean-up this town and be proud of where she lives. She thanked the police department for the progress that she has seen since she last spoke that they haven't been seeing in Banning.

Mayor Pro Tem Botts shared with the Council that he was just as surprised as this lady was and others and that was the intent of the email. A surprise that perhaps someone was coming that we didn't know about and that what was behind that email.

Shawn Melvin, Banning resident addressed the Council stating that they have had a little bit of a problem with a couple of halfway houses at 165 E. Repplier and 49 W. Repplier Street. With

these two homes it is constant chaos around where he lives. People are walking around at all hours of the night and they are trashing the area with cigarette butts, empty containers, and cigarette boxes. It used to be nice to walk around his area but now you have to look behind your back at every corner because they do not know who these people are, why they are at this halfway house and the crime that they committed. They do know that there was registered child molester there and no one in the area new about this and he thinks it is their right to know who is moving in next door to them especially when it is something like that and especially with all the kids and the families in the neighborhood. Somehow they should have knowledge of people like this coming in the neighborhood and for the last month now he has been putting up flyers about Curtis Crackle and great results have come from this. He is pulling the neighborhood that he lives in together by forming a Neighborhood Watch. With that said he feels that funding or a budget should be put together so that they can put out flyers to inform people in other areas of the City so they can know who their neighbors are and not be afraid. He said that the Banning Police Department is awesome and they are doing what they can, with what they have, but a little heads up on who is around would be amazing.

Fred Sakurai resident of Banning addressed the Council stating that one of the things that Mr. Taylor asked about this armored vehicle was what are they going to use it for and a couple of days later it turned out that the Sheriff's Department has a unit that they used up in the Banning Bench Area to apprehend a man that was in a so called bunker and nobody was injured and it came out real well so that was one use for the armored vehicle. But aside from that he has been coming to these Council meetings for many, many months and there seems to be a strange aroma arising from the two Council Members that bought their way into the Council, Mr. Miller and Mr. Peterson and they seem to be forming an alliance and now it seems that our Mayor is joining in that alliance to make it a three-vote block saying they can do anything they can. He hopes that the Mayor has not sold out her soul to the unholy alliance just to get another term as Mayor. It also seems that Mr. Puppet guide, hiding behind a cyber-wall of anonymity, is trying to ruin everything that is good about Banning, namely our good Chief of Police, Zai, and the City Manager and he is doing this through the mouth of Peterson. This is a very sad thing that is going on. He hopes that this will eventually correct itself and hopefully they will do things for the good of Banning. To Mr. Philip Goebels, if you have bad things to say about Banning come to the City Council and state your name and put yourself in the public light as does everybody else who has comments to make pro or con.

David Ellis said that he was here tonight to support the Council in their decision to look into this a-symmetric warfare vehicle that was brought into our city. A-symmetric means that there is an unevenness which puts the police department superior to the people of Banning. A-symmetric means that the police department is superior in power to the city of Banning. The implications of that mean we are being called terrorists, we are being told that we will use unconventional weapons against the City and where are we going with this. He thanked the members of our Council that are changing this City and moving it forward; you are doing a great job. When we sit here over and over again and hear the same people complaining about Councilman Miller, Mayor Franklin and Councilman Peterson; these are Bob Botts' people. They were involved in the Banning Cultural Alliance and also involved in his campaign. We all need to stop and move forward and make this a better community for everybody and not just a few.

Mayor Franklin shared once again that the Council cannot discuss or decide on anything that is brought up through public comments because it is not something that they have agendized and that is part of the Brown Act.

Mayor Pro Tem Botts said he understands that we cannot talk about it but several of the folks have come several times particularly in regards to Repplier Road and we haven't talked to our City Manager or the police. He wanted to make sure that we are engaged with the City Manager and the police department.

City Manager stated that there is going to be a Neighborhood Watch Meeting at 6:00 p.m. at 220 Lombardy Lane on October 9<sup>th</sup>.

Mayor Franklin said is anybody is interested in setting up Neighborhood Watch in their area you can contact Sgt. Diaz at the Banning Police Department.

CORRESPONDENCE: None

PRESENTATIONS:

1. Introduction and Swearing In of New Police Officer Danielle Grable
2. Introduction of Public Safety Dispatcher Amber Gifford

Lt. Phil Holder introduced Officer Danielle Grable and Dispatch Amber Gifford and stated that this evening Danielle will be sworn into office. He recognized the families of Danielle and Amber and stated that the City Manager will do the introductions of the new employees. At this time the City Clerk gave the Oath of Office to Danielle Grable.

City Manager introduced Danielle Grable stating that she was born in Riverside and moved to Yucaipa where she currently resides. She has one older brother who she loves spending time with and in her free time she enjoys an active lifestyle including outdoor activities, Crossfit, and playing adult softball. She is currently a student at Cal State San Bernardino pursuing her Bachelor's Degree in Criminal Justice with a minor in Business with an emphasis in Public Administration. Her goals as a law enforcement officer is to enjoy her career while learning and moving up the chain of command.

City Manager introduced Amber Gifford who has two children, Ian who is 6 and Elijah who is almost 2. She was born and raised in San Bernardino and currently resides in Beaumont. She graduated from San Bernardino High School in 2004, where she is the team captain for both water polo and swim team. She attended Chaffey Community College and majored in general education and in 2006 she received a scholarship to play water polo for California Baptist University where she majored in Criminal Justice. Her family enjoys camping and visiting museums and hopefully in the near future they can go and visit all of the national parks. She also enjoys reading, cooking, and entertaining. She has always wanted to work in law enforcement and her dream came true of working as a Public Safety Dispatcher and her next goal is to be accepted and go through the academy and become a police officer for the city of Banning. She looks forward to a long and enjoyable career serving the department and the citizens of Banning.

Lt. Holder said as the gentleman stated earlier in the last couple of weeks they have been made aware of one of the sex registrants in town and their detectives have been very vigilant in that and as a couple of hours ago he was taken into custody for violating his requirements. Hopefully that will help that neighborhood rest a little bit better.

#### CONSENT ITEMS

Mayor Franklin said Consent Items 4 and 8 will be pulled for comments. Mayor Pro Tem Botts asked that Consent Item No. 3 be pulled for discussion.

City Manager at this time introduced the new Battalion Chief, Tim Chavez, for the City of Banning.

Chief Chavez addressed the Council stating that as of 60 hours ago he is the new Battalion Chief. He has approximately 37 years of experience and has been mostly in the Hemet/San Jacinto area but grew up and lived in the Pass area for 35 years and he is glad to be here and his hobbies are bicycling and amateur radio.

1. Approval of Minutes – Regular Meeting – 09/24/13

Recommendation: That the minutes of the Regular Meeting of September 24, 2013 be approved.

2. Ordinance No. 1469 – 2<sup>nd</sup> Reading: An Ordinance of the City Council of the City of Banning, California, Approving Zoning Text Amendment No. 13-97503 Amending Various Sections of the Zoning Ordinance (Title 17 of the Banning Municipal Code) Pertaining to Mixed Use Developments in the Airport Industrial Zoning District, Security Fencing in the Commercial Zones, and Government Office Uses in the Downtown Commercial and Business Park Zoning Districts.

Recommendation: That Ordinance No. 1469 pass its second reading be approved.

5. City Business Permit for Care Ambulance Service, Inc.

Recommendation: The City Council review and consider approving a City Business Permit for Sacred Heart Ambulance to provide non-emergency medical transport services within the city limits of Banning.

6. Resolution No. 2013-95, Adopting a Statement of Investment Policy.

Recommendation: That the City Council adopt Resolution No. 2013-95, Adopting a Statement of Investment Policy.

7. Resolution No. 2013-96, Approving Additional Appropriations for Legal Services for Fiscal Year 2012-13 (FY 13).

Recommendation: 1) That the City Council adopt Resolution No. 2013-96, Authorizing the Administrative Services Director to make appropriations in the amount of \$281,424 for Legal Services in Fiscal Year 2012-13 (FY 13) to various funds as shown in Exhibit A, as well as the related revenue adjustment of \$125,694 also shown in Exhibit A; and 2) Authorizing the Administrative Services Director to make an appropriation, and the related revenue adjustment, in the amount of \$155,730 to cover additional legal expenses for Fiscal Year 2012-13 (FY 13) to account number 700-5300-480.33-04.

**Motion Welch/Miller to approve Consent Items 1, 2, 5, 6 and 7.** Mayor Franklin opened the items for public comments. There were none. **Motion carried, all in favor.**

4. Approval of Accounts Payable and Payroll Warrants for Month of August 2013.

Mayor Franklin opened the item for public comments.

Frank Burgess asked if any members of the Council serve on a committee that reviews the accounts payable and payroll warrants each month. Also, have any of the Council every looked at the payables or the warrant register that is presented to you each month. Do you have a committee that reviews these each month?

Mayor Franklin said yes, the Council does look at the accounts payable and payroll warrants. They do not have a committee but a copy of the warrant register goes to each of the Council Members but his idea of a committee is something that they could look at.

Mayor Franklin closed the item for public comment and opened up to the Council for comments or questions.

Councilmembers Miller and Welch said that they meet with June Overholt, Administrative Services Director or the City Manager if they do have any questions.

**Motion Welch/Miller to approve Consent Item No. 4 that the City Council review and ratify the following reports per the California Government Code. Motion carried, all in favor.**

8. Report of CPI (Consumer Price Index) Increase for Waste Management Service Charges for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2013/2014.

Director Dune Burk gave the staff report on this item as contained in the agenda packet.

Councilmember Miller said the CPI (cost of living increase) according to our specifications are based upon the Los Angeles-Orange County areas and he is sure the cost of living there is higher and going up faster than in the Riverside area. Can't we change that to simply having it evaluated by the Riverside area?

City Attorney said normally these things are done for a metropolitan area so it averages out over the whole area and that is the index that is in the agreement. Certainly the City, if it wanted to, could try and negotiate with the contractor to change the index.

Councilmember Miller asked when it would be possible to renegotiate that item. City Attorney said the contract was just renewed for ten years about two years ago. Director Burk said however the CPI was only approved for 5 years per the Prop 218 notice.

City Attorney said under State law you cannot lock in a CPI for more than 5 years so after 5 years you have to go through another public hearing process to reestablish it.

Mayor Franklin opened the item for public comments; there were none.

**Motion Peterson/Miller to approve Consent Item No. 8 that the City Council received and file the report on the annual CPI increase for Waste Management Service Charges for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2013/2014. Motion carried, all in favor.**

3. Ordinance No. 1471 – 2<sup>nd</sup> Reading: An Ordinance of the City Council of the City of Banning, California, Setting Forth a Procedure for the Annual Appointment of the Office of Mayor and Mayor Pro Tem by Councilmembers.

Mayor Pro Tem Botts said that he felt this was a major change and he is not going to argue his position. This is a change back to a very political process to select the Mayor and we had a process that was working and in the essence of transparency he hates to see these kinds of things on a consent calendar and pulled it just to make the public aware of what we are doing in changing back to the old system.

Councilmember Welch said on page 24, paragraph 2 under General/Annual Appointment, that paragraph is very confusing to him especially where it states “every other year”. It seems to him that the word “other” should be omitted.

City Attorney explained that the reason it is in there is because the very first sentence copies the “Election Code”. The Election Code provides that after your municipal election you have an organizational meeting for the Council and since our elections happen every two years pursuant to that language that is going to occur every two years. The problem is that there needs to be something in the intervening year so that we have another organizational meeting. The period of appointment is for one year. The Council wanted to go back to the old language and it also said it was a one-year appointment but said that you can be appointed to consecutive one-year terms but no more than two.

Councilmember Welch said regards to paragraph No. 4, that is brand new compared to what we have now.

City Attorney said our old rotating process provided that there were different people serving in each of those offices and they assumed that the intent would be that the person who was mayor will also be the chair of those other entities of course, that is not required. The Council did the

first reading with the language this way and if the Council wanted to preserve the option that the Chair of the Successor Agency or the Chair of the Housing Authority would be somebody different, then this would have to be changed.

There was some further Council and staff discussion.

Councilmember Welch said he had no desire to change it; he was just questioning it.

Mayor Franklin opened the item for public comments; there were none. She opened it up for comments from the Council.

Mayor Pro Tem Botts said obviously he is not going support the motion. He hates to see the Council not give folks experience in these positions. Now we all know that starting with the Mayor that everyone has one vote and it doesn't really make a difference other than chairing the meetings but his response to the City Attorney is why have one person filling all of those although they do not meet often. Why not give other Councilmembers the opportunity to serve in the Housing Authority and Successor Agency; just a thought.

City Attorney said to be clear the Mayor is the chairpersons of those entities; the Vice Mayor is the Vice Chair of those entities so there are two people but each one holds those different positions. Staff did not actually get consultation with the Council and it is fairly common that the Mayor would be the Chair of the Agency but certainly there are many agencies where it is open to being a different appointment.

**Motion Miller/Welch to approve Consent Item No. 3, that Ordinance No. 1471 pass its second reading and be adopted. Motion carried, with Botts voting no.**

#### Joint Meetings

Mayor Franklin recessed the regular City Council Meeting and called to order a joint meeting of the Banning City Council and the Banning City Council Sitting In Its Capacity of a Successor Agency and the Housing Authority.

#### REPORTS OF OFFICERS

1. Approval of a Subordination Agreement to the Loan Agreement for the First Time Homebuyer Program to Secure Interest on Property Located at 2910 Rainbow Lane (APN 538-323-009).  
(Staff Report –Zai Abu Bakar, Community Development Director)

Director Abu Bakar gave the staff report as contained in the agenda packet. She pointed out that since there is no longer a Redevelopment Agency they do not have this program anymore. In the future there may be others, that participated in this program and they may ask for subordination and staff will make sure if they decided to refinance and take the cash out based on the value of their home at that time, they would have pay back the loan in full. In this case, she is not taking any cash out based on the equity of the home and she will remain in the house.

There was Council and staff dialogue about the First Time Homebuyer Program and various questions asked about how many loans were given, can you verify that they still reside in the home, the loan being forgivable, and if they move, they have to repay the \$20,000 in full.

Councilmember Peterson said in most cases when people refinance they have to pay off the second or they have to roll the second into the first and then it is paid off. Is there any reason why we don't do that?

Director Abu Bakar said she didn't have an answer to that question but could get an answer.

City Attorney said that they would have to go back and look at the criteria for the program. In terms of just generally dealing with housing programs such as this if the person is simply getting the economic advantage of a lower rate, the original goals of the program in terms of promoting home ownership and keeping the person there and allowing them to upgrade their property with the loan that is made all those goals are still satisfied and in this circumstance it would be okay to subordinate. On the other hand, if a new buyer is coming in then the person is getting paid for the property so the issue then is, we ought to be able to recover the funds that were loaned back into the program so that they can continue to be used to promote affordable housing.

City Manager added that the source of the funding is bonds and it cannot be used for any other avenues but this.

Councilmember Peterson said furthermore on the resolution there are some other words in here that we are going to authorize the City Manager to process future items. Will that still come before the Council so that we are aware that these loans are coming through or are they just going to be handled at the City Manager's level?

Director Abu Baker said it is staff's recommendation that it be handled at the City Manager's level and the reason being if somebody wants to refinance to get the lower interest rate banks interest rates goes up very quickly and it takes time. The recommendation also says that the Chairs of the Successor Agency and the Housing Authority have to sign the subordination agreement. Staff can also do a memo to the Council letting them know what is happening or staff can bring it back to the Council.

Councilmember Peterson said he thinks the Council needs to see where the City's money is going and when it renews and where it is at and he would like to see still go through Council. There needs to be checks and balances.

Mayor Pro Tem Botts asked if this has to be approved by the Oversight Board. Director Abu Bakar said yes.

Councilmember Welch said he agrees with Councilmember Peterson that they should come back to the Council so that they know what is going on.

Mayor Franklin opened the item for public comments; there were none. She opened it up for comments from the Council; there was none.

**Motion Miller made a motion to approve Item No. 5 with Items 1 and 2 as stated. Motion seconded by Councilmember Welch.**

City Attorney said to clarify the motion is to approve the Subordination Agreement on behalf of the Successor Agency.

**Councilmember Miller changed his motion.**

**Motion Miller to approve Item 1, adopting Resolution No. 2013-11 SA, Approving a Subordination Agreement relating to the property located at 2910 Rainbow Lane. Motion seconded by Councilmember Welch. Motion carried, all in favor.**

**Motion Peterson/Miller to approve Item 2, adopting Resolution No. 2013-01 HA, Approving a Subordination Agreement to the Loan Agreement for the First Time Homebuyer Program to Secure Interest on Property Located at 2910 Rainbow Lane (APN 538-323-009). Motion carried, all in favor.**

Mayor Franklin recessed the joint meeting of the Banning City Council and the Banning City Council Sitting In Its Capacity of a Successor Agency and the Banning Housing Authority and called to order a Joint Meeting of the City Council and the Banning Utility Authority.

#### CONSENT ITEMS

Consent Item No. 2 was pulled for discussion.

1. Accept Notice of Completion for Project No. 2013-01WW, Replacement of Two Pumps at the Banning Wastewater Treatment Plant.

Recommendation: That the City Council accepts Project 2013-01WW, Replacement of Two Pumps at the Banning Wastewater Treatment Plant, as complete and direct the City Clerk to record the Notice of Completion.

Mayor Franklin opened the item for Council comments; there was none. She opened the item for public comments; there were none.

**Motion Welch/Peterson to approve Consent Item No. 1. Motion carried, all in favor.**

2. Resolution No. 2013-18 UA, Awarding a Professional Services Agreement to Willdan Financial Services for Water, Wastewater and Reclaimed Water Rate Study for an amount not to exceed \$58,963.  
(Staff Report – June Overholt, Administrative Services Director/Deputy City Manager)

Director Overholt gave the staff report as contained in the agenda packet. She stated staff is seeking Council approval for the contract, as well as, some discussion on how the ad hoc committee will work.

Mayor Franklin opened the item for questions from the Council.

Councilmember Miller said part of the rate evaluation is the evaluation for the recycled water and to have a review of the rates for recycled water when we are many years away from producing a plant that can possibly make the recycled water seems to him very strange. When would we expect to have a recycled water plant actually in operation?

Director Burk said that in May of 2013 he gave the Council a long and exhausting workshop as it relates to water availability and your regulatory requirements as they are met by Senate Bill 7 which is a 20% reduction by 2020 and a 10% reduction in your potable supply by 2015. There have been many studies and ideas to develop recycled water at two different levels. Director Burk explained in detail what has been done so far as it relates to the non-potable side by developing wells. He also explained that there is a plan that was approved by this council that spent \$2 million in design or a tertiary treatment plant at the current central plant. Initially the Council approved an idea of State Revolving Fund but in 2010 we didn't move forward with a State Revolving Fund application because we didn't have the coverage for the funding and the economy was taking a dip. But this idea developed in 1990 and you are implementing this in 2015 so this is nothing new to the Council. Also, there is an Integrated Regional Water Management Plan being identified within all the regions from Yucaipa to Cabazon and one idea is interconnecting recycled water lines together so that we can move and shift water. When this system would be in place and you could ultimately, in the future, maybe not today, exchange water with your neighbors to the east and to the west. As it relates to that you need to identify rates that wouldn't be part of this idea for Wilddan however, it would be something you could broaden your portfolio on recycled water.

Councilmember Miller said basically your statement is then in 2015 we should have recycled water from the Well R-1 and you plan on drilling another well. He asked how much water would be produced by that well and what percentage of the total water for the city would that be? Director Burk said around 1000 acre feet a year and about 12%.

Councilmember Miller said why do this now when we do not have the recycle water now and in two years everything could change.

Director Burk said his professional opinion is that you should identify those resources now and study what those costs would be to the community and he went over the challenges that you face with recycled or non-potable water. He would much rather be standing before the Council a year before we implement the well and be in compliance with the State Water Resource Control Board and/or the regulatory commissions that you have the design, identified funding and identified a rate. He would highly recommend the Council move forward today.

Councilmember Peterson said when we are studying water, wastewater, and reclaimed water rates study will the flume add to that as well and how much would a fully operational flume change the rates.

Director Burk said the flume is part of our capital projects and it is not identified in this rate study but it will be something that they will move forward to and look at. In regards to changing the rates he doesn't have an answer but it would be something that they would probably ask Willdan to put into the model.

Councilmember Peterson said if everything went good with FERC and all those other people that we are dealing with, when do you think we would be online with getting quite a bit of water out of there.

Director Burk said the flume issue has been going on for 14 years but the City is bound by agreements to participate in the surrender application for Edison and the reapplication for us to be the lead applicant to maintain and take on that flume. There have been no projections on how much extra water we would get from it however, Banning Heights is the first recipient of that water and we are the second to recharge the watershed. What has not been every quantified is if that water source went away. For example, if it does go away, how would you replace that water and recycled water would be one or non-potable water. The other side would be to go to the Delta and pay for that water above Table A water at \$5000 an acre foot and that would be something we may want to look at in the model. It would really affect the rate. If the flume went away, there would be huge negative impacts to the watershed and that is what is so critical to the flume staying in that water course.

Councilmember Peterson said a lot of times you refer to this Council approving something and the three of us were not here when a lot of things were approved.

Mayor Franklin said just to clarify, in terms of the flume, we cannot depend on how much water is coming through there unless we know what kind of snow pack we are talking about and is that correct?

Director Burk said that was correct. There is a safe yield determined that he talked about in May of the watershed and it is around 4,700 acre feet. You receive that benefit so you wouldn't want to over extract 4,700 acre feet in that basin so that is the safe yield of the Banning Water Canyon.

Mayor Franklin said in regards to the ad hoc committee and the study how long do you think that is going to take approximately to complete.

Director Overholt said in the timeline right now shows us beginning our project in November and if all goes well and if there is a need for the Prop 218 that would happen in the February and March timeframe so the ad hoc committee would be very active probably at the beginning of the year.

Councilmember Miller asked why the water from Well R-1 is not potable water. Director Burk said it does not meet Title 22 requirements as it relates to a potable water supply. It is

downstream of the percolation ponds from the Wastewater Treatment Plant and in close proximity of to those.

Councilmember Peterson asked if we didn't approve this, what effect would it have on the city.

Director Burk said to not do it would mean that you are not fulfilling what your bond coverage would be on the wastewater side because currently on your wastewater collection side is running shy so you are not covering the operation and maintenance so it affects the everyday operations and that is why we are doing the rate study. He gave some examples of the impacts if it is not approved.

Director Overholt said in a previous Council she also had the opportunity of doing a presentation and where we were at with the rate study. Council went through a difficult moment when they approved the last rate study and then she came onboard after that had occurred and there was a lot of transition with staffing that happened at the time the rate study was approved and there were some challenges that they had in being able to convey did we get the outcome that we expected when the rate study was done. So one of the benefits that you have now is that we have had some stability with staff, we have some key players on the utility side that will be able to answer better questions for the study and then this will give you clarity on moving forward with a rate study or not because we now have the data that is needed to be able to analyze it.

Mayor Franklin said in regards to an ad hoc committee is there an approximate number of people you would like to have involved in the ad hoc. Director Overholt said she was thinking somewhere between 8 and 10 so there is some reasonable dialogue and good representation.

Mayor Franklin opened the item for public comments.

Nathan Miller, Director of Government Affairs for the Building Industry Association (BIA), spoke to the ad hoc committee item and would like to be included as a participant and stakeholder in that regard.

Frank Burgess addressed the Council regarding the amount of money spent on consultants and asked why it cannot be done in-house instead of hiring consultants.

Mayor Franklin closed the item for further public comments.

Director Overholt said in recent conversations with Councilmembers there has been observations about whether staff can do all of things that are asked of it and previous Councils were a part of the reduction in staff that occurred. So as part of that process, for example, her position was created and she is responsible for Human Resources, as well as, Information Services, Utility Billing and Finance and that was just a decision that was made in order for the City to have the resources to balance the budget and with that there are not enough human staff to help do some of the detailed analysis that is required in this study. The benefit of the consultant is that this is what they do for a living so there is a lot of expertise that they bring to the table from other agencies that they have worked with also. So she sees it as a benefit to the City and as an extension to staff. Council has the ultimate decision and if this is what they choose to do, then

there are also decisions that will need to be made with the City Manager on what doesn't get done.

There were further Council comments in regards to rates having to go up, interest paid on the water bond, having adequate staff, having consultants, maintenance of Sun Lakes Blvd. and the manpower to maintain it, last minute planning, availability and management of water, higher water rates, other agencies have issues with water, and the need to move forward with a managed plan.

Mayor Franklin asked who would like to serve on the ad hoc committee and Councilmembers Miller and Welch would like to serve.

City Attorney said as Director Overholt indicated in her staff report it is our intent that we come back with an agenda item concerning the committee. This was referred to in the staff report and we didn't want some discussion but it is fine that we have some Councilmember volunteering. We want you to think about whether there are some particular groups and you have someone interested from the BIA so you might want to form this by having representatives of particular groups, the Chamber and others and general at-large citizen volunteers. Under the Maddy Act we would need to notice the availability and create a time period and the Council would need to think about how to interview and select. So since we really don't have a staff report that outlines the whole process, our thinking was that if the Council is interested in having the ad hoc committee, staff would then come back with a staff report that outlines this process that maybe gives you different options in terms of how to set-up that committee and do that quickly to get it going.

**Motion Welch/Miller to adopt Consent Item No. 2: 1) adopting Resolution No. 2013-18 UA, Awarding a Professional Services Agreement to Willdan Financial Services for Water, Wastewater and Reclaimed Water Rate Study for an amount not to exceed \$58,963; 2) Authorize the Administrative Services Director to amend the budget and to make any necessary budget adjustments, transfers or appropriations in an amount of \$20,000 in the Waste Water Fund; 3) Authorize the City Manager to execute the Professional Services Agreement with Willdan Financial Services; and 4) consider establishing an ad hoc committee to review recommendations and outcome of the study. Motion carried, all in favor.**

Mayor Franklin adjourned the joint meetings and reconvened the regular City Council Meeting.

Meeting recessed at 6:57 p.m. and reconvened at 7:08 p.m.

#### REPORTS OF OFFICERS

1. Resolution No. 2013-88, Approving the Award of a Professional Services Agreement to the Romo Planning Group, Inc. for Rancho San Gorgonio Project Manager Services.
2. Resolution No. 2013-89, Approving the Award of a Professional Services Agreement to the Planning Center | DC & E to Prepare the Environmental Impact Report for the Rancho San Gorgonio Specific Plan.

Staff Report

(Staff Report—Zai Abu Bakar, Community Development Director)

Director Abu Bakar gave the staff report on these items as contained in the agenda packet and stated that this is for project manager services that will work solely on the Rancho San Gorgonio Specific Plan and it is basically a contract planner. She mentioned that this is the beginning of the process. They submitted an application and the City has deemed their application incomplete so this is the first step of the process and we have to do this so that we can meet the State law requirements under the Permit Streamlining Act. Once the application is deemed complete by the City then we have to start processing the application to make sure that we are in compliance with the Permit Streamlining Act and also the California Environmental Quality Act.

Councilmember Peterson said he was not really sure of either of these resolutions both Resolution No. 2013-88 and 2013-89 and basically both of them have the same information. What he is looking at is a specific plan to develop 3,573 units and then the breakdown accordingly of 2,067 plus 1,506 units of high density. The problem here is and it has been pointed out to him through various community members that the present zoning for the acreage doesn't call for 3,573 units. So what you are asking for is a rubber stamp or a pre-approval for more homes than what the current zoning is actually for. And he can hear this coming back that the developer has paid for the EIR and paid for the consultant to do the work, etc. and the EIR and the contract planner says there is going to be no impact and it is going to be fine for the 3,500 homes however, the current zoning shows that it is for half of that. He is not really comfortable with looking at a document that is giving pre-approval for more homes than what is already being zoning and he personally thinks that we should only be looking at approving for what the actual zoning is for. How is it that you differentiate that?

Director Abu Bakar said the paragraph in the staff report for both resolutions is just for information purposes. Staff is not asking for approval of that specific plan because it has to go through a completely different review process including the environmental.

Mayor Franklin said that we cannot pre-judge the project before it actually comes before the Council.

Councilmember Peterson said that he is not pre-judging the project what he is pre-judging is that we are going to be awarding these contracts based upon this information.

Mayor Franklin said we are only looking at what the applicant is requesting. It doesn't mean that we are approving anything more than the amount of the contact.

There was much further Council questions and staff comments regarding the information contained in the staff report and it not being consistent with the zoning, the proposed number of units, the need for consultant help, community meetings/workshops by the developer, Permit Streamlining Act, processing of the application, developer being entitled to a fair hearing, consequences if application not processed by City, a disconnect with what the developer said, what the community wants and what is here, and why the numbers don't match.

Mayor Franklin opened the item for public comments for both items 1 and 2.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item (*any written comments handed to the City Clerk will be attached as an exhibit to the minutes*):

Rick Pippenger, resident

Inge Schuler, resident (see Exhibit "B" regarding Resolution No. 2013-88)

Don Smith, resident

Inge Schuler, resident (see Exhibit "C" regarding Resolution No. 2013-89)

Linda Pippenger, resident

Mayor Franklin closed both items for public comments.

City Attorney responded to the various questions asked by the public and the comments made about this being premature, the need for a scoping session, a need to go through the planning process, and why are we looking at this now. The purpose of these contracts is to get expertise available to us that would allow us to do all of that. Absolutely we are at the very beginning of a process and the scoping and all these other things need to occur and unless we bring consultants on board, we don't have the ability of doing that. The public is correct that there is a lot that has not happened. The misunderstanding is that they are thinking that by entering into contracts with these consultants we have somehow contractually committed ourselves to building a project that meets that criteria so that is the mistake. The contract is not a contract with the developer to do a project; it is a contract with consultants that can help us analyze the project. He said the application in May probably was not complete. He asked Director Abu Bakar is the application is complete.

Director Abu Bakar said that the application received on May 16, 2013 is deemed incomplete at this time and there is no new application.

City Attorney said all those things he said about the Permit Streamlining Act do not apply because until you have a completed application you have accepted, that is what starts the clock going.

City Attorney said Councilmember Peterson's questions about how do you communicate this lack of interest it not a clear process and he cannot say anything more about that. In terms of finding out who the developer is, that is normally something that you would check if you are going to do a developer agreement with them so he certainly has not done that at this point in time.

Mayor Franklin said there was a question about the neighborhood plan and what happens with that since it has been requested by the public.

City Attorney said the neighborhood plan process in the General Plan there is language that talks about our developing neighborhood plans and he has certainly been in communities that did that and it is a very labor intensive process because you have to go through outreach programs in

each of your neighborhoods to get their ideas and then you have to pull those ideas together into a plan and it takes quite a bit of time. We certainly don't have the staff to do that and probably something that you need consultants to come in and help you do.

There were some further Council questions and staff comment in regards to the number of units in the plan that was presented at the community meeting, the application being incomplete, getting consultants on board, and contacting the developer to summarize what has gone on at this meeting.

**Councilmember Miller made a motion to table both Resolution Nos. 2013-88 and 2013-89. Motion seconded by Councilmember Peterson.**

There was some further Council comments on this item and the processes involved and making sure the Council gets all the information that they need.

Mayor Franklin said we have a motion and a second and this is to continue the project until such time that we have further information.

City Attorney said he heard the motion was to table so a motion to table requires a motion later on to take it off the table, if that was what the motion was. You could continue this to another date, you could continue it and simply ask us to get more information but the motion he heard was a motion to table. A table sets it a side until there is a motion to take it off the table so there would actually have to be Council action to take it off the table.

Mayor Franklin asked Councilmember Miller if that was his motion. Councilmember Miller said yes and it is easy enough for us when we decide that we have enough information to bring it back. She asked Councilmember Peterson if the second was for that motion and he nodded yes.

**Motion carried with Mayor Pro Tem Botts abstaining.**

City Manager said that we will put it on the agenda when we think we are about ready to do it and we will bring it back for the Council to take it off the table.

3. Resolution No. 2013-97, Awarding the Construction Contract for Project No. 2013-03, Construction of Parking Lot Improvements at Lions Park and Repplier Park and Rejecting all Other Bids.

(Staff Report – Duane Burk, Public Works Director)

Director Burk gave the staff report as contained in the agenda packet.

Mayor Franklin asked Director Burk to explain the scope of the work. He stated that the current facility for parking at Repplier Park is the paving you see now and there will be additional parking to the south east and to the north east towards the Bowl towards the dirt, and there will be some curb and gutter improvements. The parking at Lions Park is the parking lot to the west of Lions Park currently which is the 7 acres of vacant land and it is dirt now but would be improved to a new parking facility.

Councilmember Peterson said he watched the Parks Commission meeting on the City's website that occurred on July 10<sup>th</sup> and during that televised presentation City Engineer Kahono was discussing the intent to build the parking lots and lighting at both Repplier and Lions Park. Money for the project he said would be coming from the Community Development Block Grant (CDBG) which presently we have \$513,275 available to us however, the City wants to borrow against future funding in the amount of \$198,255. Now from what he understands from the master plan there are many requirements for the Block Grant and one of those requirements in the master plan is parking lots. The City Engineer reported that the bids should have gone out on August 14<sup>th</sup> at an estimated cost of around \$430,000 for both parks. Repplier Park would gain 200 parking spaces and new lighting at an estimate of \$394,000 and Lions Park project would cost around \$165,000 so the total estimated cost according to our City Engineer was \$559,000 for the two parks. However, according to the bids submitted and the total cost of the parking lot, the project is now at \$715,000 which is \$200,000 above what we have in the bank and \$285,000 above what the City's original estimate was; that is a pretty big discrepancy. During that meeting Commission Sanchez asked the City Engineer how much a soccer field would cost and the response was \$900,000 for everything at Lions Park and he broke those costs down using the following figures: grading - \$80,000; turf and irrigation - \$240,000; and lighting at \$165,000 for a total of about \$485,000 just for the soccer field. He would guess that the \$415,000 remaining to the \$900,000 would probably be in parking lots, sidewalks, incidentals or whatever. However, Commission Sanchez then, as well as, Commission Dickson both stated that they would prefer to see a facility for the children to play on rather than a place for the cars to park on. Both said cars could park on the dirt or on the street but let the kids play on some grass which he would have to agree with. The Commissioners also pointed out that the application approved by City Council for the block grant identified a soccer field as a one of the requirements for the Block Grant. The City Engineer then stated based on the directions he got from the Public Works Director he wants to improve the parking lots. Commission Sanchez then commented that the decision has been made and there will be parking lots and obviously no soccer field. The Commission then voted on the project and by unanimous decision of the Park's Commissioners they voted to delay the parking lots and use the money to help the youth of the community and at that time he believes Commission Dickson directed Heidi to take it back to wherever it has to be taken back to. Here we are ignoring the Park's Commission recommendation and before us today is a resolution to approve the very project that was voted down and furthermore a project that again, we cannot afford but he can say that we do have the money sitting in the bank to build a soccer field, if it is as our City Engineer's price. Even if we build a soccer field now and delay lighting and a parking lot until another time, at least we are living within our means and the community is benefitting from the money that we currently have. So the question is why aren't we doing what the Commission said.

Mayor Pro Tem Botts left the Council Chambers at 8:26 p.m. and returned at 8:33 p.m.

Director Burk said that he was not at that meeting and with all due respect the addition of 7 acres of grass, when we are currently struggling with the manpower we have today, is an unrealistic goal for the Parks Department to maintain an additional 7 acres of grass.

Councilmember Peterson said that this is like a bridge to nowhere and this is a parking lot for what? If you don't have a facility there, why do we need a parking lot?

Director Burk said as it relates to spending the money versus losing the money he is not making a unilateral decision to build parking lots. He is making a recommendation to the Council for approval. If you choose not to do it based on the Parks and Recreation Commission, he wants the Council to also be aware of maintaining the additional 7 acres of grass plus the reality of allowing the 7 acres of grass to be maintained is an unrealistic goal by the current staffing levels. The other side of it is if you put in 7 acres of grass and children down there, where do people park; they will park in the dirt. He said that they have received numerous complaints from the people that live on Westward and on the frontage of Lions Parks. You have an additional 500 kids playing there and you have people using that dirt for spinouts, etc. They have issues here recently with ADA access and a complaint has been filed recently within the last couple of months. We are on notice as it relates to access. So as a Public Works Director he can make a recommendation to the Council as to what he can maintain and what fits into the master plan. With all due respect to the Parks and Recreation Commission he has made the statement to them before that adding additional grass is difficult for them to maintain and so this is a reality of what they can maintain and construct under Community Development Block Grant money. So if you don't build it, it is strictly up to the Council. But if you don't fund it or appropriate the money, you have a chance to lose the money or being reprogrammed somewhere else. If it is the desire of the Council to go back and build the soccer field and direct him that way tonight, you can reject all the bids and he will go that way. However, he wants to be on record that maintaining those 7 acres will be extremely difficult with the manpower we have.

Councilmember Peterson asked if this could go back to the Parks Commission because they did disapprove the parking lot.

Mayor Franklin said we have to find out what the time frame is before we use it or lose it.

Director Burk said he doesn't have that answer tonight and they can definitely tell the Community Development Block Grant administrators that the Council would like to move forward with a soccer field and reprogramming all the money to Lions Park however, you have tried that once and they have denied it. They tried to reprogram this money to do the entire project and the CDBG personnel said no, you have to do Repplier Park, a master planned facility there. So what you may do tonight is award the Repplier Park Master Plan percentage and let us build that parking lot. They will go back to CDBG and with whatever money is left, will do that as a separate project and ask them to hold that money. However, you have been denied the opportunity to go and build the entire package at Lions Park. So if you wish to build the parking facilities and find out what money you have left and then reapply for that money for the entire soccer field we will need to go down that different process and ask them to hold the balance of the money in CDBG and you will not have enough to build the entire 7 acres of the soccer field.

Councilmember Miller asked why are they, CDBG, interested in having Repplier Park improved rather than having a soccer field.

Director Burk said that we applied that way for the annual application applied for Repplier Park improvements.

Councilmember Miller said so there is no reason to think that they would not approve a soccer field if it was applied for.

Director Burk said that we tried that. Councilmember Miller asked why it was refused. Director Burk said your application annually that comes to this Council and previous Council's awarded that they would do Repplier Park improvements. So as a redirection because you didn't get the funding from Prop 84, you have a bank of money that is in jeopardy of being used somewhere else in a facility in another town because it is competitive money that can go to another project that is ready to go. We are saying that we have a couple of projects that are ready to go, Parking Lot Master Planned Facility for Repplier Park, parking lot plan for Lions Park. We did try to move all the money to do the soccer field and it was denied. They said you have to do a Master Planned Facility at Repplier Park.

Councilmember Miller asked why the soccer was field refused and this accepted; what is the reason.

Director Burk said because our application for the last three years approved by the Council is that we would do the Master Planned Facilities at Repplier Park as our application.

Councilmember Miller asked if it was a previous decision of the previous Council's to do the parking lot rather than the soccer field.

Director Burk said no, there was approval to rebuild the Repplier Park Bowl and apply for match money through CDBG. In fact, we designed the Bowl, the Master Planned Facility, with CDBG money for the last previous three applications. We spent \$500,000 for the design with CDBG money, then we came back and said we are going to apply for a grant because you cannot apply for the grant if you don't have plans and specifications. So they submitted the Prop 84 money with plans and specifications and it is a very competitive process and the City did not receive any funding so they held that money in the account for the last 2 to 3 years applying for Prop 84 money. The window to lose that money is ticking so it was then decided that we should do the soccer field because we have a different needs and the Parks Commission wanted to move that way so they went to CDBG as they requested. They went to HUD and asked to move all the money and it was denied. You have to do a Master Planned Facility within what you have adopted and that was the parking lot and what we have left is not enough to do the soccer field. But recently we have some parking issues and some complaints and you could build that parking lot but you have to get prefunding money from the year before and we don't have enough money to do even do that. So we are trying to bifurcate the project and what he is suggesting to the Council as an alternative for tonight is to identify the parking facilities on Repplier that you have and that will make HUD happy that we moved forward and whatever is leftover we will carry over into the CDBG account and we reapply for money in the future for Lions Park.

Councilmember Miller asked if he had an idea as to the minimum required to satisfy the parking in Repplier and how much money will be left for part of the soccer field.

Director Burk said he didn't have an answer that question at this time.

City Manager said one of the reasons they went with the Lions Park parking is because we received an American's with Disabilities Act complaint. That complaint means that we have to do something at Lions Park at the parking lot and obviously this was a convenient way for us to take care of that issue by using CDGB. If not, those monies are going to have to come from your reserves to make sure we comply and we can settle that complaint that we have received.

There was further questions and comments from the Council in regards to the ADA complaint and time frames, how much time do we have to use this money and can we lose it, possibly taking this back to the Parks Commission, the soccer field being denied and is there a notice of denial, the original application request for the soccer field, and why not go with what the Parks Commission recommended to shovel the parking lot and do what is best for the kids.

Director Burk said that if it is the discretion of the Council to reject all the bids, then that is what he would ask the Council to do tonight or do the alternative he gave for Repplier Park or at your pleasure he can go back and talk to HUD but if they deny it and you lose the money he wanted to make sure that the record is very clear that staff was recommending moving forward with this project.

Mayor Franklin opened the item for public comments.

Bill Dickson, Vice Chair of the Parks Commission addressed the Council stating that the main concern he has is that for the first time than he thinks we can remember we have over 600 kids playing Little League and that is quite an accomplishment of Jim and his wife. He thinks the main concern is what can we do today. We have fields that are inadequate, they are unsafe. We have Repplier Park and if you sit on the benches you will get splinters in your rear end and there are things that need immediate attention. All this grandiose thing about building a new this and a new that; we can't fix what we have. We have kids playing on inadequate fields. He would love to see a soccer field but let's concentrate on what we have and get it safe to play on and get these 600 kids we have out there a safe place to go and our citizens that go to the Park Bowl. Let's get things done that have to get done now.

Mayor Franklin closed the item for public comment.

**Motion Mayor Pro Tem Botts to approve Resolution No. 2013-97. Seconded by Councilmember Peterson.**

Councilmember Peterson asked what was the motion. Councilmember Miller and Mayor Franklin said the motion was to approve. Councilmember Peterson withdrew his second. Mayor Franklin said you can vote against it but it moves the motion forward. Councilmember Peterson said okay.

Councilmember Miller said he is not an expert in this area and what he understands is that the Park Commission has a different idea and he doesn't know which one is more correct but he believes the Park Commission is the one that is most familiar with the parks and knows what the parks need and what repairs have to be made and whether or not a soccer field is appropriate. He

doesn't believe it is proper for him make that decision and he doesn't see why he should and thinks that is the preview of the Park Commission.

**Councilmember Miller made a substitute motion since we have some time to send this back to the Parks Commission after they have heard everything that has been said here and let the Parks Commission come back with another recommendation whether or not they still think something else should be done or whether they do agree with Mr. Burk that the parking lots are the appropriate use for this money so he has made that motion to send it back to the Parks Commission. Motion seconded by Councilmember Peterson.**

**Mayor Franklin called for a vote on the second motion first which is to send this back to the Parks and Recreation Commission to review the recommendation again from staff and then bring it back to Council. Motion carried with Councilmembers Botts and Welch voting no.**

Mayor Franklin said that would eliminate the first motion. She asked that when it goes back to the Parks and Recreation Commission that you look at possibly recommending some work to be done within Repplier Park if possible to do part of the seats or if not able to do that, then still give us a recommendation regarding the parking lots which is an ADA (Americans with Disabilities Act) issue.

City Manager said that the Council still needs to reject all bids.

Mayor Franklin asked for a motion to reject all bid.

**Motion Peterson/Miller to reject all bids.** Councilmember Miller asked if we had to reject all bids because it is quite possible that the Park Department may approve this and then we have the bids so can't we just delay on this.

Director Burk said he didn't know when the Parks and Recreation Commission were going to meet again and he doesn't know how long you can hold the bids.

Mayor Franklin asked for staff to have a meeting as soon as it can be scheduled. Director Meraz stated that the Parks and Recreation Commission have a meeting scheduled for next week.

City Attorney said you have these bids which are a contract and he thinks that the Council should take a clear action with regards to that. Staff can list this item on your next agenda and make an oral report to you on what happened.

Mayor Franklin said okay.

Director Burk asked if the bids were okay as long as the contractor holds the bid.

City Attorney said yes, as long as they hold them. If some of the contractors decide not to hold them, then they go away. So it is likely, as long as we are not talking about two months from now, that they will want to hold them over to get the work.

Mayor Franklin said it will be agendized as an oral report and there will be no written staff report. City Attorney said you will put the same item back on the agenda.

Mayor Franklin opened the item for public comments again.

Bill Dickson said when it come back to the Parks and Recreation Commission there is one thing they have to consider because they do have an ADA complaint to deal with so there has to be some common ground that they can reach to satisfy that and also do what is best for the youth of the community.

**ANNOUNCEMENTS/REPORTS** *(Upcoming Events/Other Items if any)*

City Manager reminded the Council that they have reached the 9:00 p.m. meeting deadline and you have to have a unanimous vote to continue on with the agenda otherwise you have to adjourn the meeting.

**Motion Botts/Miller to continue on with the meeting. Motion carried, all in favor.**

**City Council**

Councilmember Botts—

- He commented there are two things that have trouble him and although he appreciates his good friend Mr. Sakurai we don't always agree on some things and on some things we do agree but there are others saying what is going on with this Council. The divisiveness that people are seeing and feeling with staff, with citizens out of control, with Planner Commissioner it's beginning to permeate the city and maybe you are not hearing it but he is beginning to hear that. It has been nine months and this is a typical night and he appreciates debate and facts and that kind of thing and asking tough questions but nine months and he looks back and says what in the world have we done positive for this community in nine months. Thank God for our staff that just keeping plugging away despite what we say and despite what we do. He said that he has come to the end of the line and he wishes you great luck and hopes you can bring the four of you and a new member together but he resigns. He left the Council Chambers at 9:04 p.m.

Mayor Franklin —

- She thanked all of staff that worked on the Bulky Item Day on Saturday in regards to collecting items and it was a terrible day with wind and she watched staff continue to work as sheets of wind kept hitting them and wanted to convey to your staff and residents that participated that day that they did an exceptional job given the conditions. She also commended the Key Club that came out and also worked as bad as it was.
- Also we had a Habitat home dedication yesterday and it was the 11<sup>th</sup> house that we have had and that has included 40 new residents for our City and they were here but they are now homeowners here.

**City Committee Reports** - None

**Report by City Attorney** – None at this time.

### Report by City Manager

- The State of the City will be held on October 15<sup>th</sup> at 11:00 a.m.
- Workshop on the Housing Element will be held at the next City Council Meeting and will be held right after regular City Council business.
- Starting in December we will have workshops on the different departments and what they do.

### ITEMS FOR FUTURE AGENDAS

#### New Items –

Mayor Franklin said she would like to have a workshop just going over where we are and updating the Council completely on what is going on with other departments and tie everything together.

#### Pending Items

Mayor Franklin said in regards to Pending Item No. 5 we have to look at advisory boards and citizen review committees and she asked the Council if they would allow Councilmember Welch and herself to work on that item and bring it back to the Council for review on how we can form a Citizens Advisory Committee. **There was Council consensus.**

1. Schedule Meetings with Our State and County Elected Officials (*Sept./Oct.*)
2. Let's Move – Healthy Initiative (*Nov. 12*)
3. Workshop Regarding Future of Airport
4. Report on Moving Station 20 back to original firehouse. (*wait for new Battalion Chief*)
5. Workshop on how appointments are made to City Commissions/Committees, attendance, and look at advisory boards/citizens review committee.
6. Open House: 5 to 7 p.m. – Wed. in October – Open to Public
7. Discussion on how to handle loans or distributions to charities.
8. Discussion on how the City Council handles gifts to the City.

### ADJOURNMENT

By common consent the meeting adjourned at 9:07 p.m.

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Marie A. Calderon, City Clerk

THE ACTION MINUTES REFLECT ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.

From: Bob Botts  
To: Andy J. Takata; Duane Burk  
Subject: New Quarry  
Date: Friday, January 11, 2013 2:47:02 PM

# CORRESPONDENCE BANNING QUARRY

Your Eyes Only!

Andy/Duane:

Are you two aware of exiting or perhaps a new company that wants to expand or start a new quarry in Banning?

Steve Hernandez, after the Oversight Board Meeting, was acting cutsy, and said what's going on with Robertson and their quarry. I said we were working on a number of issues, etc. He said what about expansion of their operation. I said I had not heard anything like that. He said what about someone new coming in a starting a new quarry. I said what are trying to say.....he said, oh, well, I can't really say but don't be surprised.

I don't think any of us what to be surprised whether it is Robertson wanting to expand or Granite wanting to come to Banning. If Hernandez knows something they Marion and Jaime know something, if there is anything to it.

I would hope we could quietly dig around a little and see what we can uncover.

Bob

**BOB BOTT'S  
ANDREW TAKATA  
ZAI  
DUANE BURK  
MARION ASHLEY  
ALL SUPPORT ILLIGAL MINNING  
PM 10'S SLOWLY KILLING PEOPLE  
CITY CAN'T HANDLE CURRENT GROWTH**

Received 10/8/13  
Council mtg.

Inge Schuler  
1030 W Westward Avenue  
Banning, CA 92220

October 8, 2013

To the Mayor Debbie Franklin and City Council members:

Regarding Resolution 2013-88

This agreement that is before you tonight is for a project that has not yet seen a scoping session, has not yet been presented to Planning Commission, has not been through a Gen Plan Amendment process to change the zoning so that it would be compliant with the intended zoning use of the Specific Plan. It has the unpleasant appearance that this process and expenditure by the city is being rushed through to result in a finished contractual agreement that is then impossible to alter.

Once again, we are told what to accept and have no say in the procedures that seem to have been hatched in back rooms.

Staff, most of whom do not reside in the city and have no clue of the actual geography, layout of streets and thoroughfares, neighborhoods that have grown over the decades, are making arbitrary decisions that have far reaching consequences for the entire city of Banning and for many years to come.

I implore you to continue this matter until it passes the smell test and the project has been properly and adequately vetted.

Sincerely,

Inge Schuler

Received 10/8/13  
Council mtg.

Inge Schuler  
1030 W Westward Avenue  
Banning, CA 92220

October 8, 2013

To the Mayor Debbie Franklin and City Council members:

Regarding Resolution 2013-89

Before you tonight is the most troubling Resolution to award an Agreement to prepare an Environmental Impact Report (EIR) for the Rancho San Gorgonio (RSG) Specific Plan, in the amount "Not to Exceed" \$186,013.00. The **Background** information indicates that the City of Banning received recently – no date has been given – an application from RSG to develop a master planned community etc.

This massive project has not even been presented by the city agencies to the residents for view and comments as well as for other input, and yet staff is forging ahead with an EIR at great anticipated cost. If previous experiences are an indication, once the EIR is completed, we will be told that Ah Well, the developer has spent this much money, we cannot deny him the right to pursue the project. That absolutely flies in the face of the democratic process. The residents of Banning have the ultimate right to have a say in what type of community we want to live in. This right cannot be usurped by a developer who comes sauntering in and tells us his vision of what we want.

The agenda packet does not even include a map or description of the project. There is no detailed staff report that would justify this rushing head long into an EIR before the necessary and required General Plan Amendment and Zone changes have been completed. I understand that the existing zoning is RA which allows a maximum of two dwelling units per acre. The proposed number of dwelling units changes that VLDR zoning substantially. That can only mean that this Specific Plan is geared toward low and moderate income housing. We all know that we have plenty of that.

From the developer's own presentation on Feb 21, 2012, there is a plan to include the parcel of Dysart Park in his housing development and he plans to "give" the city a new park. The plans shown at the meeting show a tremendous inadequacy of that plan.

Please scrap this Resolution and proceed with a proper disclosure to the residents : scoping sessions, allowing for input and discussion before permanently and irrevocably fixing something that is not broken

Sincerely,  
Inge Schuler

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

10/15/13  
SPECIAL JOINT MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on October 15, 2013 at 1:33 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller  
Councilmember Peterson  
Councilmember Welch  
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager  
June Overholt, Administrative Services Director  
Lona N. Laymon, Assistant City Attorney  
Duane Burk, Public Works Director  
Zai Abu Bakar, Community Development Director  
Marie A. Calderon, City Clerk

## PUBLIC COMMENTS

There were none.

## REPORTS OF OFFICERS

## 1. Selection Method of Filling Vacant City Council (Staff Report – Andrew J. Takata, City Manager)

City Manager said he wanted to make sure what the ordinance currently says, "If a vacancy occurs in a city council seat, the city council may, within thirty days from the commencement of the vacancy, fill the vacancy by appointment or call for a special election. If the city council calls for a special election or if the council takes no action within thirty days, the matter shall proceed by special election as set forth in the Government Code Section 36512(b)." Basically if you don't appoint anybody by 30 days it is going to cost roughly \$40,000 for a special election. One of the things that we have been talking about with our City Attorney is possibly rescinding that section and then it would revert back to Government Code Section 36512 which allows you 60 days for appointment otherwise you have to call a special election. Thirty days is pretty quick and we have 23 days left so we have already lost 7 days since this happened. It is staff suggestion that we bring back an ordinance basically rescinding that section in our Code so it will revert back to the Government Code 36512. There is a variety of different ways that the Council can pick and in the past they have used an application form and he thinks the Council

should consider this and obviously the Council could pick anyone today if they wanted to but he would suggest that it be advertised and also give direction to bring back that change in the Code.

Mayor Franklin said that there are three things that the Council needs to give direction on and that is 1) decide whether or not we are moving to having an election versus appointment; 2) time frame – whether it would 30 or 60 days; and 3) to review the application and decide if we want to use the one provided or revise it.

City Manager said one of the issue is that if we can hurry up the process and get someone on very quickly there could be a chance that the Council gets together and looks at the applicants and decides you don't want any of those and you cannot get a quorum to vote for that person so having that 60 extra days is helpful plus the public should be aware of it so everybody will have an opportunity to apply at that point.

Attorney Laymon said that they would have to bring back the actual retraction of the ordinance at a regular meeting but in addition to all the considerations that City Manager mentioned and basically the fact that this ordinance is probably binding your hands a lot more than it needs to she thinks that there is a very strong argument that it actually contradicts the Government Code and it certainly creates a lot of confusion especially because even though your ordinance refers to Government Code 36512 it misquotes the government code section because since this ordinance was adopted the government code section has changed substantially. So there is a real gap between State law and what you have in your code which would be an additional reason that she would recommend for retracting the ordinance at a regular meeting.

Mayor Franklin opened the item for Council comments and started with the election versus appointment. There were Council comments. She opened the item for public comments and there were none. **There was Council consensus for an appointment.**

Mayor Franklin said that the Council will now give direction whether we want to stay with our current code or with the new Government Code and will need to request an amendment to our Banning Municipal Code.

Mayor Franklin opened the item for Council questions.

Councilmember Miller said he is not certain whether we are replacing our section by stating we will follow section 3612 of the Government Code.

Attorney Laymon recommended retracting this provision entirely and leave it blank and then by default you fall back on the Government Code. If we were to re-write the Government Code maybe in a few years we would be right back in the situation where we are where the Government Code is changed and our ordinance has not. So we would just take it out entirely and rely on the Government Code 36512.

Councilmember Miller said you wouldn't say filling a vacant city council seat, Government Code 36512 applies; it would be clearer. Attorney Laymon said that they could also do that just

that we would proceed pursuant Government Code 36512. City Manager said it could be a reference in our City Code.

Mayor Franklin opened the item for public comment. There were none.

Mayor Franklin opened it up for direction.

Councilmember Welch recommended that staff bring back an ordinance to replace the current Banning Municipal Code section with the Government Code Section 36512 that applies.

Councilmember Miller said he is not sure what that recommendation said.

Attorney Laymon said we cannot change an ordinance at a special meeting therefore all we are seeking at this time is direction from the Council to bring the matter back to a regular meeting. If you would like to give staff that direction, she would state for the record if you wish, to direct staff to bring back to a regular meeting a code amendment retracting the current ordinance and simply cross-referencing Government Code 36512 for purposes of vacancies.

**There was Council consensus to this direction.**

City Manager said that you currently have an old application and this application is kind of dated and he would suggest that the Council create a subcommittee which would work on this application and try to get it out as soon as possible.

Mayor Franklin asked the Council about a sub-committee being formed and there were Council comments.

Councilmember Peterson suggested that each of the Councilmembers work on the application questions and then turn it into the City Manager and let him gather up the information and create a new application.

Attorney Laymon said that was fine as long as the Council is not conferring amongst them and you take it home and you individually submit your comments without copying other Councilmembers.

City Manager said that we don't really want to advertise until the application is done and the latest we can get it to the Record Gazette is 10 a.m. on Tuesday if we want to advertise and if he could get those comments by the end of the work so that they can meet the deadline of the newspaper. **There was Council consensus to get their questions to the City Manager by Thursday.**

Mayor Franklin opened the item for public comments.

Gail Paparian addressed the Council and she is unsure about the selection process. Are you advertising it for members of the public to apply and is that the way it is going to be? She asked if the Council will just appoint from the applicants.

Mayor Franklin said that was correct.

Fred Sakurai said he thinks the city of Banning is very fortunate that they have a wealth of experience in the common citizens of the city like Don Robinson, Barbara Hanna, and Don Smith so we have a lot of people with a lot of experience but he doesn't know what their personal feelings are and he has not talked to them about it and it may be like asking them to walk barefoot in a dog park with blindfolds on, he doesn't know if they would like to get in there or not. Then we have Lyndon Taylor and they have not agreed on many things but he would maintain the ratio of Sun Lakers to non-Sun Lakers on the City Council. Then you also have a Mr. Ellis but then unless he keeps his hands to himself may bankrupt the City. But the whole thing depends on what the puppet guide, Mr. Goebels wants so he will leave it at that.

Mayor Franklin closed the item for public comments.

Mayor Franklin said we have direction for staff and have a consensus that everyone will look over the form and review it and make any comments and give it to staff by the end of Thursday and it will be compiled by the City Manager and then go out to the public hopefully the following Friday's Record Gazette.

City Manager said they will give it about a two-week notice after that Friday that it goes out and one of the things that the Council will also have to do is to figure out interview questions and so he will probably use the same process for interview questions. And depending on how many applications you get you may have to do it over a couple of days.

Mayor Franklin asked the Council to make their recommendations for the applications but also questions for the interview and get them to the City Manager by Thursday and then we can have it all compiled and ready for whenever we actually interview and then it will be noticed when we will be closing the application process and when the actual applicants will be interviewed.

#### ADJOURNMENT

By common consent the meeting adjourned at 1:51 p.m.

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Marie A. Calderon, City Clerk

**THE MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE CITY COUNCIL. AUDIOTAPES OF THE ACTUAL MEETING ARE AVAILABLE FOR LISTENING IN THE OFFICE OF THE CITY CLERK.**

## CITY COUNCIL AGENDA

**Date:** October 22, 2013  
**TO:** Honorable Mayor and City Council  
**FROM:** Fred Mason, Electric Utility Director  
**SUBJECT:** Resolution 2013-92 Adopting the American Public Power Association's Safety Manual (15<sup>th</sup> Edition) as the Official Safety Manual to be used by the City of Banning's Electric Utility.

**RECOMMENDATION:** The City Council adopt Resolution 2013-92, adopting the American Public Power Association's Safety Manual (15<sup>th</sup> Edition) as the official Safety Manual to be used by the City of Banning's Electric Utility.

**JUSTIFICATION:** Adopting an official Safety Manual is essential to stay in compliance with State and Federal regulations.

**BACKGROUND:** To ensure employee safety and continued compliance with State and Federal regulations, the City hired Black & Veatch Consulting to perform a Safety Audit Review on the overall Electric Utility operations. This review resulted in a number of recommendations and has had a very positive effect on the Utility's operations.

One of the recommendations was to formally adopt the American Public Power Association's (APPA) Safety Manual as the official Safety Manual to be used by the Electric Utility. Because Banning is a small utility and doesn't have the means to develop its own detailed and comprehensive safety manual, the historical practice has been to utilize the APPA Safety Manual. The Black & Veatch representative noted that this was a common practice among smaller utilities, but that in order to be in regulatory compliance, the utility's governing board must formally adopt the APPA Safety Manual as its official document.

Therefore, staff is recommending that the City Council approve resolution 2013-92, adopting the American Public Power Association's Safety Manual (15<sup>th</sup> Edition) as the official Safety Manual to be used by the Electric Utility.

**FISCAL DATA:** There is no fiscal impact associated with this resolution.

**RECOMMENDED BY:**

  
Fred Mason  
Electric Utility Director

**APPROVED BY:**

  
Andrew J. Takata  
City Manager

**RECOMMENDED BY:**

J. A. Overholt  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**RESOLUTION NO. 2013-92**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ADOPTING THE AMERICAN PUBLIC POWER ASSOCIATION'S SAFETY MANUAL (15<sup>TH</sup> EDITION) AS THE OFFICIAL SAFETY MANUAL TO BE USED BY THE CITY OF BANNING'S ELECTRIC UTILITY.**

**WHEREAS**, the City of Banning owns and operates its Municipal Electric Utility; and

**WHEREAS**, State and Federal regulations require that the Electric Utility adopt an official Safety Manual; and

**WHEREAS**, the City of Banning desires to utilize the American Public Power Association's Safety Manual (15<sup>th</sup> Edition) as its official safety manual to be used by the Electric Utility;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Banning as follows:

**SECTION 1.** Adopt Resolution No. 2013-92 adopting the American Public Power Association's Safety Manual (15<sup>th</sup> Edition) as the official safety manual to be used by the Electric Utility.

**SECTION 2.** Authorize the Electric Utility Director, or his/her designee, to incorporate said Safety Manual into the Electric Utility operations, and to ensure that it is replaced with the most current Edition, as it is updated from time-to-time by the American Public Power Association.

**PASSED, ADOPTED AND APPROVED** this 22nd day of October 2013.

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Deborah Franklin, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT:

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David J. Aleshire, City Attorney  
Aleshire and Wynder, LLP

ATTEST:

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Marie A. Calderon, City Clerk  
City of Banning

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-92 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 22nd day of October 2013 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Marie A. Calderon, City Clerk  
City of Banning, California

## CITY COUNCIL AGENDA

**Date:** October 22, 2013

**To:** Honorable Mayor and City Council

**From:** Fred Mason, Electric Utility Director

**Subject:** Resolution No. 2013-99, Approving the Banning Electric Utility Power Content Label

**RECOMMENDATION:** Adopt Resolution No. 2013-99, approving the Banning Electric Utility ("Utility") Power Content Label, attached herewith as Exhibit "A".

**JUSTIFICATION:** California State Assembly Bill 162 (AB 162) requires that all load serving electric utilities develop and provide to its customers on an annual basis a Power Content Label ("Label").

**BACKGROUND:** On October 11, 2009 the Governor signed AB 162, which amended the Power Content Label reporting requirements originally set forth in Senate Bill 1305. The amendments changed the reporting requirements from quarterly to annual, and require that utilities report actual power content information instead of projected.

The information must be provided to the utility's customers through either printed or electronic means, including posting it on the City's website. The Utility will provide it by posting an electronic copy of the Label on the City's website.

The California Energy Commission (CEC), which has oversight authority for this requirement, has stated that the governing body of each locally owned public utility must approve the annual Power Content Label for the utility(s) under its jurisdiction. Therefore, Staff is requesting that the City Council approve Resolution 2013-99, accepting the Utility's Power Content Label, attached herewith as Exhibit "A".

**FISCAL DATA:** There are no fiscal impacts.

**RECOMMENDED BY:**



Fred Mason  
Electric Utility Director

**APPROVED BY:**



Andy Takata  
City Manager

Prepared by Jim Steffens

**RESOLUTION NO. 2013-99**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE BANNING ELECTRIC UTILITY POWER CONTENT LABEL**

**WHEREAS**, the City of Banning owns and operates its Municipal Electric Utility; and

**WHEREAS**, California State Senate Bill 1305 and Assembly Bill 162 have certain reporting requirements pertaining to electric utility Power Content Labels; and

**WHEREAS**, the Banning Electric Utility is subject to these reporting requirements; and

**WHEREAS**, the California Energy Commission, which has oversight authority for this requirement, has stated that the governing body of each locally owned public utility must approve the annual Power Content Label for the utility(s) under its jurisdiction;

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Banning as follows:

**SECTION 1.** Adopt Resolution No. 2013-99, approving the Banning Electric Utility's Power Content Label.

**SECTION 2.** Authorize the Electric Utility Director, or his designee, to disseminate the information included on the Power Content Label to the Utility's customers in compliance with the requirements of Senate Bill 1305 and Assembly Bill 162.

**PASSED, ADOPTED AND APPROVED** this 22<sup>nd</sup> day of October 2013.

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Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

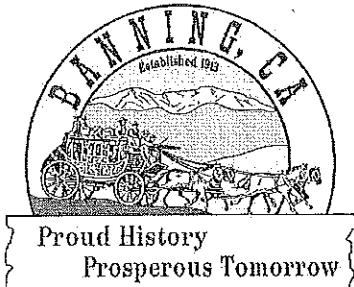
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Marie A. Calderon, City Clerk  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

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David J. Aleshire, City Attorney  
Aleshire and Wynder, LLP



## Exhibit "A"

### City of Banning Electric Department

October 2013

The State of California passed legislation in the form of Assembly Bill 162, which requires load serving electric utilities to provide customers with a copy of the Power Content Label on an annual basis. Below is the current Label for the Banning Electric Utility, which represents its actual Power Mix for 2012. The CA Power Mix shows the breakdown for the State overall, and is shown for comparison. Please contact the Banning Electric Utility at (951) 922-3260 if you have any questions regarding this information.

ENERGY RESOURCES	POWER CONTENT LABEL	
	2012 POWER MIX (Actual)	2012 CA POWER MIX**
Eligible Renewable	13%	15%
-- Biomass & waste	0%	2%
-- Geothermal	13%	4%
-- Small hydroelectric	0%	2%
-- Solar	0%	1%
-- Wind	0%	6%
Coal	65%	8%
Large Hydroelectric	1%	8%
Natural Gas	0%	43%
Nuclear	4%	9%
Other	0%	0%
Unspecified sources of power**	17%	16%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>

\* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.

\*\* Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.

For specific information about this electricity product, contact the City of Banning. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or [www.energy.ca.gov/consumer](http://www.energy.ca.gov/consumer).

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** October 22, 2013

**TO:** City Council

**FROM:** Heidi Meraz, Community Services Director

**SUBJECT:** Resolution No. 2013-101, Authorizing the Purchase of One (1) 2013 Glaval Universal CNG Powered Dial-A-Ride Bus from A-Z Bus Sales Utilizing the California Association for Coordinated Transportation (CALACT) Competitive Bid Award for a Total of \$112,487.

**RECOMMENDATION:** The City Council adopt Resolution No. 2013-101, "Authorizing the Purchase of one (1) 2013 Glaval Universal CNG Powered Dial-A-Ride bus from A-Z Bus Sales utilizing the California Association for Coordinated Transportation (CalACT) competitive bid award for a total of \$112,487. This purchase will be made through the State of California Contract 1-11-23-20."

**BACKGROUND:** As a portion of the annual Short Range Transit Plan (SRTP), anticipated capital expenses are identified and funded. In the 2009-10 SRTP funding was allocated for the purchase of Dial-A-Ride vehicles through STA (State Transit Authority), of which not all has been used. In addition, funding in the amount \$59,496.78 is available through monies remaining from 2008/09 Public Transportation Modernization, Improvement and Service Account (PTMISEA) which is included in the Proposition 1B bond act. The amount of PTMISEA funding approved may only be used for public transit vehicle procurement.

The City provides paratransit service, also referred to as "Dial-A-Ride" services to persons with disabilities and to senior citizens (60 + years of age). Dial-A-Ride service is provided in specially built minibuses. When considering bus replacement, the following criteria were used:

1. Passenger seating to accommodate current and projected ridership
2. Alternative Fuel vehicle to support City's commitment to Green
3. Vehicle range and amenities available
4. Proven vehicle in successful service in other municipalities

California Association for Coordinated Transportation conducts Caltrans approved vehicle procurements as a competitive process for many various types and sizes of transit vehicles. This cooperative contract was produced through a competitive bid process which allows California cities and transit districts to receive lowest possible pricing for vehicles. With over 700 vehicles procured last year from this contract, factory and dealer pricing is at the maximum discount, thus negating any advantage the City might have by conducting our own bid process.

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**FISCAL DATA:** Funding for this purchase are available in Transit fund 610-5850-434-90-51. There will be no impact to the General Fund.

**RECOMMENDED BY:**

  
Heidi Meraz  
Community Services Director

**REVIEWED BY:**

  
June Overholt  
Administrative Services Director

**APPROVED BY:**

  
Andy Takata  
City Manager

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**RESOLUTION NO. 2013-101**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE PURCHASE OF ONE (1) 2013 GLAVAL UNIVERSAL CNG POWERED DIAL-A-RIDE BUS FROM A-Z BUS SALES UTILIZING THE CALIFORNIA ASSOCIATION FOR COORDINATED TRANSPORTATION (CALACT) COMPETITIVE BID AWARD FOR A TOTAL OF \$112,487.**

**WHEREAS**, funding has been made available for the purchase of a paratransit vehicle through the State Transit Authority and Public Transportation Modernization, Improvement and Service (PTMISEA); and

**WHEREAS**, a paratransit vehicle that is presently in the Banning Pass Transit Fleet has exceeded its useful life; and

**WHEREAS**, Banning Pass Transit desires to purchase a paratransit vehicle through A-Z Bus Sales that will meet the needs of the department; and

**WHEREAS**, Utilizing California Association for Coordinated Transportation (CalACT) competitive bid award is the most fiscally responsible means for acquiring the above mentioned Dial-A-Ride bus.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING AS FOLLOWS:**

**SECTION 1.** Authorizing the Purchase of One (1) 2013 Glaval Universal CNG Powered Dial-A-Ride Bus from A-Z Bus Sales Utilizing the California Association for Coordinated Transportation (CALACT) Competitive Bid Award for a total amount of \$112,487.

**PASSED, APPROVED and ADOPTED** this 22<sup>nd</sup> day of October, 2013.

---

Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

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Marie A. Calderon, City Clerk  
City of Banning

**APPROVED AS TO FORM AND  
LEGAL CONTENT:**

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David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-101 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22<sup>nd</sup> day of October, 2013 by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Marie A. Calderon, City Clerk  
City of Banning, California



## CITY COUNCIL AGENDA

**Date:** October 22, 2013

**TO:** City Council

**FROM:** June Overholt, Administrative Services Director/Deputy City Manager

**SUBJECT:** Report of Investments for July 2013

**RECOMMENDATION:** The City Council receive and file the monthly *Report of Investments*.

**JUSTIFICATION:** State law requires that a monthly report of investments be submitted to the Governing Legislative Body.

**BACKGROUND/ANALYSIS:** This report includes investments on hand at the end of July 2013. As of July 31, 2013, the City's operating funds totaled \$65,564,333. Included in Successor Agency operating funds is \$701,918 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Summary Schedule.

As of July 31, 2013 approximately 41% of the City's unrestricted cash balances were invested in investments other than LAIF.

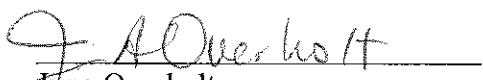
The July Investment Report includes the following documents:

- Summary Schedule of Cash and Investments
- Operational Portfolio Individual Investments
- Individual Investments with Fiscal Agent
- Investment Report Supplemental Information

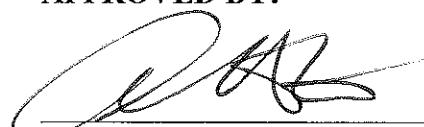
A request for proposal has been issued to determine whether investment earnings could be improved enough to cover the administrative costs of an investment management firm. An investment management firm would provide input on updating the investment policy, provide quarterly reports to the city, and provide daily management of investments.

**FISCAL DATA:** The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) increased to 0.267% in July. The average rate for all investments in July was 0.320%.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

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**Summary Schedule of Cash and Investments**

<b>Operating Funds</b>	<b>Amount</b>
<u>Petty Cash</u>	2,805

<u>Bank Accounts</u>	Interest	
	Rate	Amount
Wells Fargo Bank	0.000%	823,216
Bank of America-Airport	0.300%	3,960
Bank of America-Parking Citations	0.300%	3,826
Bank of America-CNG Station	0.300%	3,409

*Money Market and Bank Account Sub-Total* 834,411

Government Pools

Account #1 Operating Amount	37,486,309	
Account #1 CRA Bond Cash Bal.	701,918	
Local Agency Investment Fund: Account #1	0.267%	38,188,227
Account #2 Sucessor Agency Cash Bal	0	
Local Agency Investment Fund: Account #2	0.267%	<u>0</u>

*Government Pool Sub-Total* 38,188,227

**Operating Cash Balance** 39,025,443

Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund 0.000% 833,424

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2 0.410% 25,705,466

**Operating Funds Total** 65,564,333

**Fiscal Agent**

	<b>Amount</b>
US Bank	<u>37,767,598</u>

**Fiscal Agent Total** 37,767,598

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# City of Banning Investment Report

July 31, 2013

## Operational Portfolio Individual Investments

Bank Accounts	Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Date	Discount or (Premium) Amortization	Market Value
823,216	Wells Fargo Bank-Operating	n/a	0.00%	0.00%	daily	varies	823,216	n/a	823,216
	Wells Fargo Bank-Investment Acct	n/a	0.10%	0.10%	daily	varies		n/a	
3,960	Bank of America-Airport	n/a	0.30%	0.30%	daily	varies	3,960	n/a	3,960
3,826	Bank of America-Parking Citations	n/a	0.30%	0.30%	daily	varies	3,826	n/a	3,826
3,409	Bank of America-Parking Citations	n/a	0.30%	0.30%	daily	varies	3,409	n/a	3,409
	Sub-total								834,411
<u>Government Pools</u>									
38,188,227	L.A.I.F. account #1	n/a	0.267%	0.267%	daily	varies	38,188,227	n/a	38,188,227
0	L.A.I.F. account #2	n/a	0.267%	0.267%	daily	varies	0	n/a	0
									38,188,227
<u>Investments US Bank/Piper Jaffray</u>									
2,000,000	Federal Home Loan Bks	n/a	0.375%	0.375%	7/30/2015	1/30/2013	2,000,000		1,998,800
3,000,000	Federal Home Loan Bks	n/a	0.500%	0.500%	4/1/2016	4/11/2013	3,000,000		2,988,420
1,000,000	FHLMC Mtn	n/a	0.570%	0.570%	6/20/2016	6/6/2013	1,000,000		997,140
1,000,000	FNMA	n/a	0.750%	0.750%	12/19/2016	6/19/2013	1,000,000		993,640
1,000,000	FNMA Deb	n/a	0.550%	0.550%	6/6/2016	6/20/2013	1,000,000		994,630
3,000,000	FNMA	n/a	1.125%	1.125%	1/30/2017	7/30/2013	3,000,000		3,009,870
3,000,000	Federal Farm Credits Bks	n/a	0.940%	0.940%	7/15/2016	7/15/2013	3,000,000		3,006,060
11,716,906	Money Market	n/a	0.020%	0.020%	daily	varies	11,716,906	0	11,716,906
US Bank/Piper Jaffray Average Rate=			0.410%						25,705,466

Average Rate All= 0.320%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on September 24, 2013. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 229 days and does not include Bond Reserve Fund Investments.

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# City of Banning Investment Report

July 31, 2013

## Individual Investments with Fiscal Agent

TRUSTEE	Bond	Maturity	Bond	Current	Bond	Minimum	Bond Reserve	Bond	Reserve	Interest	Jul-13	Market	7/31/2013
Bond Issue Description	Date	Investment Description	Yield	Maturity Date	Requirement	Requirement	Maturity Date	Bond	Reserve	Interest	Jul-13	Value	
<b>COB IMPROVEMENT DISTRICT LIMITED OBLIGATION BONDS SERIES 2005A</b>													
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 5-Ct	0.040%	daily	188,943	7.17						218,059	
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION, SERIES 2003</b>													
2003 CRA Tax Allocation Bonds	2028	US Treasury Bill	4.61%	7/28/2011	971,763	1,856.27						992,414	
		US Bank Mmkt 5-Ct	0.040%	daily									
		US Bank Mmkt 5-Ct	0.040%	daily									
		US Bank Mmkt 5-Ct	0.000%	daily									
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>													
Redevelop Fund	2037	US Bank Mmkt 5-Ct	0.040%	daily	273,83	8,329,387							
Reserve Fund		US Bank Mmkt 5-Ct	0.040%	daily	61.66	1,875,536							
Special Fund		US Bank Mmkt 5-Ct	0.040%	daily									
Surplus Fund		US Bank Mmkt 5-Ct	0.000%	daily									
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>													
Interest Account		US Bank Mmkt 5-Ct	0.000%	daily									
Principal Account		US Bank Mmkt 5-Ct	0.040%	daily									
		US Bank Mmkt 5-Ct	0.040%	daily									
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>													
Interest Account		US Bank Mmkt 5-Ct	0.050%	daily									
Principal Account		US Bank Mmkt 5-Ct	0.040%	daily									
Reserve Fund		US Bank Mmkt 5-Ct	0.040%	daily									
Project Fund		US Bank Mmkt 5-Ct	0.040%	daily									
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>													
		US Bank Mmkt 5-Ct	0.030%	daily									
		US Bank Mmkt 5-Ct	0.040%	daily									
		US Bank Mmkt 5-Ct	0.040%	daily									
<b>Total</b>													
<b>*Paid Semi-Annually-Deposited into Money Mkt Account</b>													
<b>3,003.49</b>													
<b>37,767,598</b>													

78

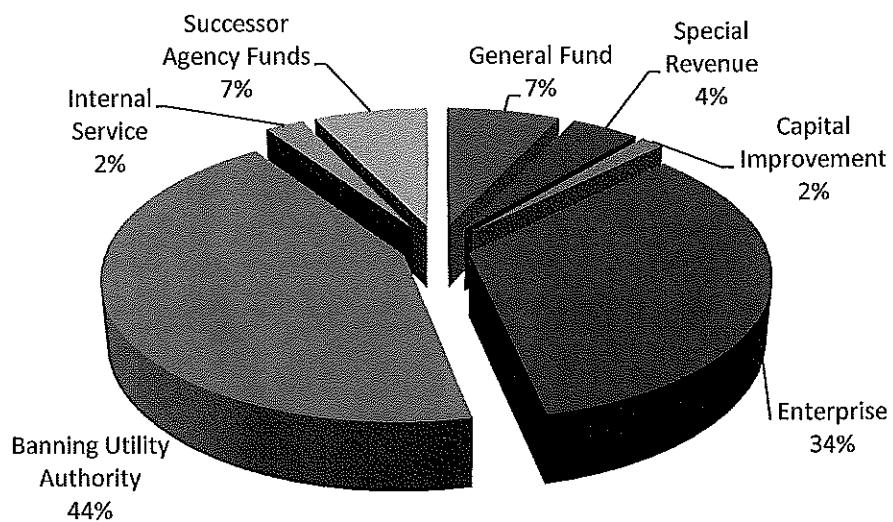
\*Paid Semi-Annually-Deposited into Money Mkt Account

# City of Banning

## Investment Report Supplemental Information

### Pooled Cash Distribution

Investment reports for cities typically do not include the cash balance of the individual funds that make up the total pooled cash. This is primarily due to timing differences between when investment reports are prepared and when month end accounting entries are posted. Investment reports are usually prepared first. However, the pie chart below provides an understanding of the percentage distribution of the investments by fund type. The percentages were calculated using the average cash balances from the nine month period of July 2012 to June 2013. *(The percentages will be updated quarterly.)*



The Table below describes the funds that are included within the Fund Types used for the pie chart.

Fund Type	Description of funds
Governmental	General Fund
Special Revenue	Restricted Funds (i.e. CFDs, grants)
Capital Improvement	Development Impact Fee funds
Enterprise	Airport, Transit, Refuse, Electric
Banning Utility Authority	Water, Wastewater, Reclaimed water
Internal Service	Risk Management, Fleet, IT, Utility Services
Successor Agency Funds	Previously called Redevelopment Agency

### Summary Schedule – Line item descriptions

## Summary Schedule – Line item descriptions

### Petty Cash –

The City maintains petty cash in various departments for incidental purchases. This line item includes the cash drawers for cashiering in utility billing.

### Bank Accounts –

- Wells Fargo Bank – This is the City checking account. All cash receipts, payroll and accounts payables checks are processed through this account. Balances fluctuate based on activity and cash flow needs. As excess funds accumulate, they are transferred to LAIF to increase earnings.
- Bank of America – Airport – The City maintains a Trust account for credit card purchases made at the airport. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.
- Bank of America – Parking Citations – The City maintains a Trust account for the processing of parking citations through Turbo Data. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.
- Bank of America – CNG – The City maintains a Trust account for credit card purchases of CNG fuel made at the City yards. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.

### Government Pools –

- Local Agency investment Fund – Account #1
  - This account includes both City pooled funds and a restricted cash balance related to the CRA bonds. Investments in LAIF are limited to \$50M.
- Local Agency investment Fund – Account #2
  - There is currently no balance in this account.
  - Note: When the State established the cutoff date of January 31, 2012 for the elimination of the Redevelopment Agency, LAIF staff recommended a transfer of the available balance from the CRA account to the City account to protect the funds from a rumored State raid or freezing of the funds.

### Restricted Operating Funds at Riverside Public Utilities –

The City Electric operation has an agreement with Riverside Public Utilities (RPU) to purchase power for the City. Part of the agreement requires that the City maintain a balance in the trust account used by RPU. The City does not control the investments or earnings of the trust account.

### Other Investments –

Currently the City works with a Piper Jaffray broker to make various investments per the City policy and in accordance with State guidelines. The Broker is not on retainer, nor do they receive a City paid fee with each investment. Funds in the Money Market fluctuate as securities mature or get called. Staff is in the process of investing the Money Market funds over several months. We will be adding an additional broker to provide more investment options.

### Fiscal Agent / US Bank –

Unspent bond proceeds and required bond reserves are invested by the Fiscal Agent in accordance with the bond documents.

## CITY COUNCIL AGENDA

**Date:** October 22, 2013

**TO:** City Council

**FROM:** June Overholt, Administrative Services Director/Deputy City Manager

**SUBJECT:** Report of Investments for August 2013

**RECOMMENDATION:** The City Council receive and file the monthly *Report of Investments*.

**JUSTIFICATION:** State law requires that a monthly report of investments be submitted to the Governing Legislative Body.

**BACKGROUND/ANALYSIS:** This report includes investments on hand at the end of August 2013. As of August 31, 2013, the City's operating funds totaled \$66,030,496. Included in Successor Agency operating funds is \$701,918 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Summary Schedule.

As of August 31, 2013 approximately 43% of the City's unrestricted cash balances were invested in investments other than LAIF.

The August Investment Report includes the following documents:

- Summary Schedule of Cash and Investments
- Operational Portfolio Individual Investments
- Individual Investments with Fiscal Agent
- Investment Report Supplemental Information

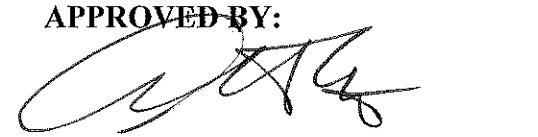
A request for proposal has been issued to determine whether investment earnings could be improved enough to cover the administrative costs of an investment management firm. An investment management firm would provide input on updating the investment policy, provide quarterly reports to the city, and provide daily management of investments.

**FISCAL DATA:** The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) increased to 0.271% in August. The average rate for all investments in August was 0.314%.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

**Summary Schedule of Cash and Investments**

<b>Operating Funds</b>	<b>Amount</b>
<i>Petty Cash</i>	<u>2,805</u>

<i>Bank Accounts</i>	Interest	
	Rate	Amount
Wells Fargo Bank	0.000%	2,316,531
Bank of America-Airport	0.300%	3,177
Bank of America-Parking Citations	0.300%	3,047
Bank of America-CNG Station	0.300%	<u>4,310</u>

*Money Market and Bank Account Sub-Total* 2,327,065

***Government Pools***

Account #1 Operating Amount	36,486,309	
Account #1 CRA Bond Cash Bal.	701,918	
Local Agency Investment Fund: Account #1	0.271%	<u>37,188,227</u>
Account #2 Successor Agency Cash Bal	0	
Local Agency Investment Fund: Account #2	0.271%	<u>0</u>
<i>Government Pool Sub-Total</i>		<u>37,188,227</u>

**Operating Cash Balance** 39,518,097

***Restricted Operating Funds at Riverside Public Utilities***

Highmark U.S. Government Money Market Fund	0.000%	<u>847,377</u>
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***Other Investments***

Investments-US Bank/Piper Jaffray - See Page 2	0.406%	<u>25,665,023</u>
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***Operating Funds Total*** **66,030,496**

***Fiscal Agent***

	<b>Amount</b>
US Bank	<u>35,875,324</u>

***Fiscal Agent Total*** **35,875,324**



# City of Banning Investment Report

August 31, 2013

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Date	Discount or (Premium)	Market Value
<i>Bank Accounts</i>								
2,316,531	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	2,316,531	n/a	2,316,531
-	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	-	n/a	-
3,177	Bank of America-Airport	n/a	0.30%	daily	varies	3,177	n/a	3,177
3,047	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,047	n/a	3,047
4,310	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,310	n/a	4,310
	Sub-total						2,327,065	
<i>Government Pools</i>								
37,188,227	L.A.I.F. account #1	n/a	0.271%	daily	varies	37,188,227	n/a	37,188,227
0	L.A.I.F. account #2	n/a	0.271%	daily	varies	0	n/a	0
							37,188,227	
<i>Investments-US Bank/Piper Jaffray</i>								
2,000,000	Federal Home Loan Bks	n/a	0.375%	7/30/2015	1/30/2013	2,000,000	1,997,440	
3,000,000	Federal Home Loan Bks	n/a	0.500%	4/11/2016	4/11/2013	3,000,000	2,983,080	
1,000,000	FHLMC Mtn	n/a	0.570%	6/20/2016	6/6/2013	1,000,000	993,610	
1,000,000	FNMA	n/a	0.750%	12/19/2016	6/19/2013	1,000,000	989,510	
1,000,000	FNMA Deb	n/a	0.550%	6/6/2016	6/20/2013	1,000,000	992,630	
3,000,000	FNMA	n/a	1.125%	1/30/2017	7/30/2013	3,000,000	2,995,110	
3,000,000	Federal Farm Credits Bks	n/a	0.940%	7/15/2016	7/15/2013	3,000,000	2,996,520	
11,717,123	Money Market	n/a	0.010%	daily	varies	11,717,123	0	11,717,123
	US Bank/Piper Jaffray Average Rate=		0.406%					25,665,023
							Average Rate All=	0.314%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on September 24, 2013. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 221 days and does not include Bond Reserve Fund Investments.



## City of Banning Investment Report

August 31, 2013

### Individual Investments with Fiscal Agent

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Bond Reserve Requirement	Minimum Reserve Requirement	Interest Aug-13	Market Value	8/31/2013
<b>COB IMPROVEMENT DISTRICT LIMITED OBLIGATION BONDS SERIES 2005A</b>									
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 5-Ct	0.040%	daily	188,943	7.41			309,915
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION, SERIES 2003			4.61%	7/28/2011	971,763	1.11			
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill	0.040%	daily					1,003,908
		US Bank Mmkt 5-Ct	0.040%	daily					
		US Bank Mmkt 5-Ct	0.040%	daily					
		US Bank Mmkt 5-Ct	0.000%	daily					
Surplus Fund									8
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>									
Redevelop Fund	2037	US Bank Mmkt 5-Ct	0.040%	daily	1,880,751	282.97			
Reserve Fund		US Bank Mmkt 5-Ct	0.040%	daily		63.72			8,329,670
Special Fund		US Bank Mmkt 5-Ct	0.050%	daily		40.79			1,875,225
Surplus Fund		US Bank Mmkt 5-Ct	0.000%	daily					41
									9
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>									
Interest Account		US Bank Mmkt 5-Ct	0.000%	daily					
Principal Account		US Bank Mmkt 5-Ct	0.040%	daily					
		US Bank Mmkt 5-Ct	0.040%	daily					
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Interest Account		US Bank Mmkt 5-Ct	0.050%	daily					
Principal Account		US Bank Mmkt 5-Ct	0.040%	daily					
Reserve Fund		US Bank Mmkt 5-Ct	0.040%	daily					
Project Fund		US Bank Mmkt 5-Ct	0.040%	daily					
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>									
Acquisition & Construction		US Bank Mmkt 5-Ct	0.030%	daily					
		US Bank Mmkt 5-Ct	0.040%	daily					
		US Bank Mmkt 5-Ct	0.040%	daily					
Total						1,246.08			35,875,324
*Paid Semi-Annually-Deposited into Money Mkt Account									

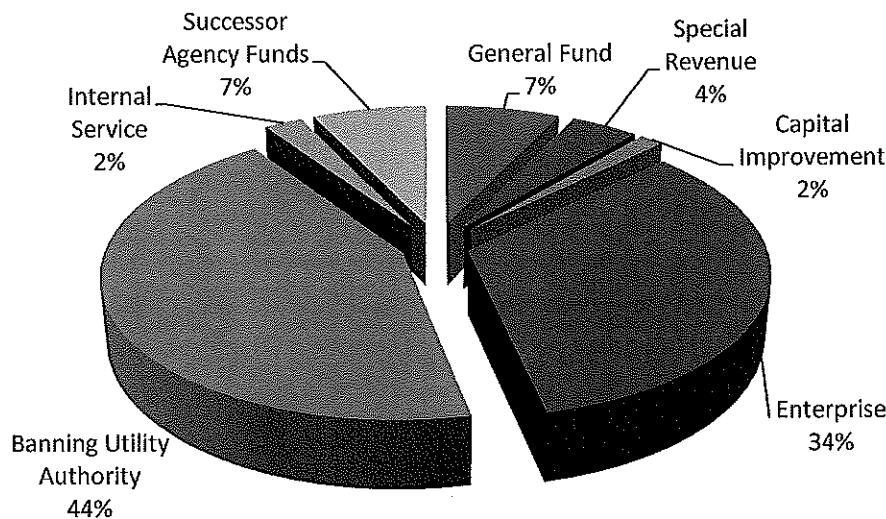
SF

# City of Banning

## Investment Report Supplemental Information

### Pooled Cash Distribution

Investment reports for cities typically do not include the cash balance of the individual funds that make up the total pooled cash. This is primarily due to timing differences between when investment reports are prepared and when month end accounting entries are posted. Investment reports are usually prepared first. However, the pie chart below provides an understanding of the percentage distribution of the investments by fund type. The percentages were calculated using the average cash balances from the nine month period of July 2012 to June 2013. *(The percentages will be updated quarterly.)*



The Table below describes the funds that are included within the Fund Types used for the pie chart.

Fund Type	Description of funds
Governmental	General Fund
Special Revenue	Restricted Funds (i.e. CFDs, grants)
Capital Improvement	Development Impact Fee funds
Enterprise	Airport, Transit, Refuse, Electric
Banning Utility Authority	Water, Wastewater, Reclaimed water
Internal Service	Risk Management, Fleet, IT, Utility Services
Successor Agency Funds	Previously called Redevelopment Agency

## Summary Schedule – Line item descriptions

### Petty Cash –

The City maintains petty cash in various departments for incidental purchases. This line item includes the cash drawers for cashiering in utility billing.

### Bank Accounts –

- Wells Fargo Bank – This is the City checking account. All cash receipts, payroll and accounts payables checks are processed through this account. Balances fluctuate based on activity and cash flow needs. As excess funds accumulate, they are transferred to LAIF to increase earnings.
- Bank of America – Airport – The City maintains a Trust account for credit card purchases made at the airport. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.
- Bank of America – Parking Citations – The City maintains a Trust account for the processing of parking citations through Turbo Data. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.
- Bank of America – CNG – The City maintains a Trust account for credit card purchases of CNG fuel made at the City yards. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.

### Government Pools –

- Local Agency Investment Fund – Account #1
  - This account includes both City pooled funds and a restricted cash balance related to the CRA bonds. Investments in LAIF are limited to \$50M.
- Local Agency Investment Fund – Account #2
  - There is currently no balance in this account.
  - Note: When the State established the cutoff date of January 31, 2012 for the elimination of the Redevelopment Agency, LAIF staff recommended a transfer of the available balance from the CRA account to the City account to protect the funds from a rumored State raid or freezing of the funds.

### Restricted Operating Funds at Riverside Public Utilities –

The City Electric operation has an agreement with Riverside Public Utilities (RPU) to purchase power for the City. Part of the agreement requires that the City maintain a balance in the trust account used by RPU. The City does not control the investments or earnings of the trust account.

### Other Investments –

Currently the City works with a Piper Jaffray broker to make various investments per the City policy and in accordance with State guidelines. The Broker is not on retainer, nor do they receive a City paid fee with each investment. Funds in the Money Market fluctuate as securities mature or get called. Staff is in the process of investing the Money Market funds over several months. We will be adding an additional broker to provide more investment options.

### Fiscal Agent / US Bank –

Unspent bond proceeds and required bond reserves are invested by the Fiscal Agent in accordance with the bond documents.

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**CITY COUNCIL AGENDA  
PUBLIC HEARING**

**DATE:** October 22, 2013

**TO:** City Council

**FROM:** Zai Abu Bakar, Community Development Director

**SUBJECT:** Ordinance No. 1472 - Adoption of the Latest Editions of California Building, Residential, Green Building Standards, Plumbing, Mechanical and Electrical Codes

**RECOMMENDATION:** That the Council introduce the first reading of Ordinance No. 1472 and schedule the second reading of the Ordinance for the November 12, 2013 City Council meeting.

**JUSTIFICATION:** The State's Health and Safety Code requires local governments to adopt the most recent editions of the model codes related to construction. The Construction Codes include the California Building, Residential, Green Building Standards, Plumbing, Mechanical, and Electrical Codes. If the City Council approves Ordinance No. 1472 the most recent editions of the Construction Codes with the applicable amendments will be in effect within the City of Banning as required by State law. This procedure is in accordance with California Government Code Title 5, Division 1, Part 1, as published by the Building Standards Bulletin 09-02.

**BACKGROUND/ANALYSIS:** The State's Health and Safety Code Section 17958 mandates that the California Building Standards Commission adopt and publish the California Building Standards Code (Title 24 California Code of Regulations) every three (3) years. The 2013 Edition of the California Code of Regulations Title 24, which incorporates the below-listed model codes, becomes effective on January 1, 2014.

Ordinance No. 1472 amends Title 15 of the Municipal Code by repealing references to the prior editions of the model codes.

The list below identifies the model codes upon which the 2013 Title 24 is based.

<u>California Building Standards Code</u>	<u>Reference Model Code</u>
2013 California Building Code	2012 International Building Code (ICC)
2013 California Residential Code	2012 International Residential Code (ICC)
2013 California Green Building Standards Code	
2013 California Plumbing Code	2012 Uniform Plumbing Code (IAPMO)
2013 California Mechanical Code	2012 Uniform Mechanical Code (IAPMO)
2013 California Electrical Code	2011 National Electrical Code (NFPA)
2012 International Property Maintenance Code	

The Construction Codes proposed for adoption by reference include the following:

- 2013 California Building Code
- 2013 California Residential Code
- 2013 California Green Building Standards Code
- 2013 California Plumbing Code
- 2013 California Mechanical Code
- 2013 California Electrical Code
- 2012 International Property Maintenance Code

The Community Development Department is recommending that no changes or modifications be made to the Codes.

**FISCAL REVIEW:** No fiscal impact.

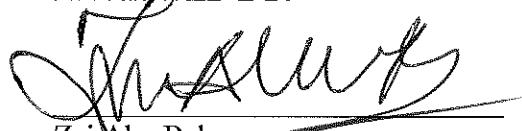
**CONCLUSION:** That the City Council approve Ordinance No. 1472 adopting the latest editions of the Construction Codes which will be in effect within the City of Banning as required by State law.

**APPROVED BY:**



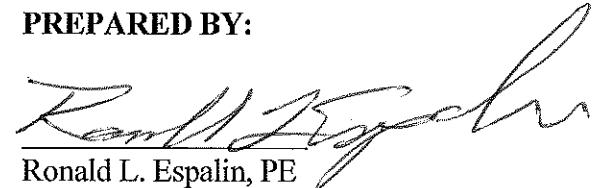
Andrew J. Takata  
City Manager

**REVIEWED BY:**



Zai Abu Bakar  
Community Development Director

**PREPARED BY:**



Ronald L. Espalin, PE  
Building Official

Attachments

1. Ordinance No. 1472
2. Exhibit A – Penalty Provisions
3. Public Hearing Notice

**Attachment 1**

**Ordinance No. 1472**

## **ORDINANCE NO. 1472**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA, AMENDING CHAPTER 15.08 OF THE BANNING MUNICIPAL  
CODE BY ADOPTING BY REFERENCE THE ENTIRETY OF THE LATEST  
CALIFORNIA BUILDING CODE, RESIDENTIAL CODE, GREEN BUILDING  
STANDARDS CODE, PLUMBING CODE, MECHANICAL CODE, ELECTRICAL  
CODE, AND INTERNATIONAL PROPERTY MAINTENANCE CODE, ALL AS  
RELATIVE TO CONSTRUCTION CODES**

**WHEREAS**, the State's Health and Safety Code Section 17958 mandates that the California Building Standards Commission adopt and publish the California Building Standards Code (Title 24 California Code of Regulations) every three (3) years; and

**WHEREAS**, the State's Health and Safety Code requires local governments to adopt the most recent editions of the model codes related to construction; and

**WHEREAS**, the construction codes include the California Building, Residential, Green Building Standards, Plumbing, Mechanical, and Electrical Codes; and

**WHEREAS**, the adoption of the Ordinance related to construction codes is consistent with California Government Code Title 5, Division 1, Part 1, as published by the Building Standards Bulletin 09-02.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

### **SECTION 1. ADOPTION**

Chapter 15.08 of the Banning Municipal Code relating to "Adoption of Uniform Codes" is hereby amended by deleting the existing Chapter 15.08 in its entirety and adopting a new Chapter 15.08 to read as follows in its entirety:

"Chapter 15.08 Construction Codes

Sections:

15.08.010      Incorporation by Reference.

15.08.020      Interpretation of the Banning Municipal Code and Zoning Code with regard to references to the amended Construction Codes

15.08.030      Additional Penalties

**15.08.010      Incorporation by Reference.**

A.      Except as otherwise provided in this chapter for the purposes of prescribing regulations for erecting, construction, enlargement, alteration, repair,

improving, removal, conversion, demolition, occupancy, equipment use, height, and area of building and structures, the following construction codes are hereby adopted as "Chapter 15.08, Construction Codes," and all appendices, tables, and indices thereto, as the same existed on December --, 2013, are hereby adopted by reference and incorporated as if fully set out herein, and the provisions thereof shall be controlling within the limits of the city.

1. California Building Code, 2013 Edition, including Chapter 1 Division II, based on the 2012 International Building Code as published by the International Code Council;
2. California Residential Code, 2013 Edition, based on the 2012 International Residential Code as published by the International Code Council;
3. California Green Building Standards Code, 2013 Edition;
4. California Plumbing Code, 2013 Edition, based on the 2012 Uniform Plumbing Code as published by the International Association of Plumbing and Mechanical Officials;
5. California Mechanical Code, 2013 Edition, based on the 2012 Uniform Mechanical Code as published by the International Association of Plumbing and Mechanical Officials;
6. California Electrical Code, 2013 Edition, based on the 2011 National Electrical Code as published by the National Fire Protection Association;
7. International Property Maintenance Code, 2012 Edition, as published by the International Code Council; the Uniform Code For The Abatement of Dangerous Buildings, 1997 Edition, as published by the International Code Council.

B. One copy of the Construction Codes, described in this Section, has been deposited in the office of the city clerk and shall be at all times maintained by the city clerk for use and examination by the public.

**15.08.020 Interpretation of the Banning Municipal Code and Zoning Code with regard to references to the amended Construction Codes**

For the purposes of interpreting the adopted Construction Codes in the Banning Municipal Code and Zoning Code, references to the Uniform Building Code shall be replaced with the latest adopted California Building Code, if any.

**15.08.030 Additional Penalties**

In addition to those penalty provisions adopted by reference from those codes listed in Section 15.08.010, the following penalties shall also apply:

It shall be unlawful for any person, firm, corporation or association of persons to violate any provision of this ordinance, or to violate the provisions of any permit granted pursuant to this ordinance. Any person, firm, corporation or association of persons violating any provisions of this ordinance or the provisions of any permit granted pursuant to this ordinance, shall be deemed guilty of an infraction or misdemeanor as hereinafter specified. Such person or entity shall be deemed guilty of separate offense for each and every day or portion thereof during which any violation of any of the provisions of this ordinance or the provisions of any permit granted pursuant to this ordinance, is committed, continued, or permitted.

Any person, firm, corporation or association of persons so convicted shall be: (1) guilty of an infraction offense and punished by a fine not exceeding two hundred dollars (\$200.00) for a first violation; (2) guilty of an infraction offense and punishable by a fine not exceeding three hundred dollars (\$300.00) for a second violation on the same site. The third and any additional violations on the same site shall constitute a misdemeanor offense and shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00) or six months in jail, or both. Notwithstanding the above, a first offense may be charged and prosecuted as a misdemeanor. Payment of any penalty herein shall not relieve a person or entity from the responsibility for correcting the violation."

## **SECTION 2. FINDINGS**

The City of Banning is not making any amendments to the California Building Codes; therefore, the findings are not required per the California Government Code Section 17958.7.

## **SECTION 3. PENALTIES ADOPTED BY REFERENCE**

Violation of or failure to comply with any of the provisions of Chapter 15.08, Construction Codes shall be subject to those penalty provisions set forth in Attachment "A" hereto. These penalty provisions are so set forth herein to meet the requirements of Government Code Section 50022.4; such penalty provisions are also adopted by reference pursuant to Section 1 without any revisions (unless otherwise specified above) and, therefore, such penalty provisions as printed in Attachment "A" need not be codified in the Banning Municipal Code.

## **SECTION 4. SEVERABILITY**

If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portions thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences clauses, phrases or portions thereof be declared invalid or unconstitutional.

## **SECTION 5. EFFECTIVE DATE**

This Ordinance shall be in full force and effective 30 days after its passage.

**PASSED, APPROVED, AND ADOPTED** at a regular meeting of the City Council of the City of Banning, California, this 22<sup>nd</sup> day of October, 2013.

---

Debbie Franklin, Mayor  
City of Banning

**ATTEST:**

---

Marie A. Calderon, City Clerk  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

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David J. Aleshire  
Aleshire & Wynder, LLP  
City Attorney

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1472 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 22<sup>nd</sup> day of October 2013, and was duly adopted at a regular meeting of said City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, City Clerk  
City of Banning  
Banning, California

**Attachment 2**

**Exhibit “A” – Penalty Provisions**

## EXHIBIT "A"

**Penalties.** In addition to the penalty provision provided in Section 15.08.030 of this chapter, the following penalty provisions are incorporated by reference into Chapter 15.08, but will not be expressly stated therein:

**California Building Code Section 114.1 - Unlawful acts.** It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

**California Building Code Section 114.2 - Notice of violation.** The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition or occupancy of a building or structure in violation of the provisions of this code, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

**California Building Code Section 114.3 - Prosecution of violation.** If the notice of violation is not complied with promptly, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

**California Building Code Section 114.4 - Violation penalties.** Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the *approved construction documents* or directive of the *building official*, or of a *permit* or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by law.

**California Residential Code – R113.3 Prosecution of violation.** If the notice of violation is not complied with in the time prescribed by such notice, the *building official* is authorized to request the legal counsel of the *jurisdiction* to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

**California Residential Code - R113.4 Violation penalties.** Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the *approved construction documents* or directive of the *building official*, or of

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a *permit* or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by law.

**California Residential Code - R114.2 Unlawful continuance.** Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

**California Plumbing Code Section 102.4 - Violations.** It shall be unlawful for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, or maintain any plumbing or permit the same to be done in violation of this code.

**California Plumbing Code Section 102.5 - Penalties.** Any person, firm, or corporation violating any provision of this code shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine and/or imprisonment set forth by the governing laws of the jurisdiction. Each separate day or any portion thereof, during which any violation of this code occurs or continues, shall be deemed to constitute a separate offense.

**California Plumbing Code – Section 1326.12 Corrections.** Notices of correction or violation shall be written by the Authority Having Jurisdiction and posted at the site of the work, mailed or delivered to the permittee or an authorized representative. Refusal or failure to comply with any such notice or order within ten (10) days of receipt thereof shall be considered a violation of this code, and shall be subject to the penalties set forth elsewhere in this code for violations.

**California Mechanical Code Section 109.0 - Violations.** It shall be unlawful for a person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, or maintain mechanical systems or equipment or cause or permit the same to be done in violation of this code.

**International Property Maintenance Code Section 106.4 – Violation Penalties.** Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

**International Property Maintenance Code Section 106.5 – Abatement of Violation.** The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

**Attachment 3**

**Public Hearing Notice**



## NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** of a public hearing before the City of Banning City Council, to be held on Tuesday, October 22, 2013, at 5:00 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the adoption of the 2013 Construction Codes which includes 2013 California Building Code, Residential Code, Green Building Standards Code, Plumbing Code, Mechanical Code, Electrical Code, and International Property Management Code.

Information regarding the proposed hearing matter can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning.

All parties interested in speaking either in support of or in opposition to any item are invited to attend said hearing, or to send their written comments to the Community Development Department, City of Banning at P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the City Council makes its decision on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Zai Abu Bakar  
Community Development Director

Dated: October 8, 2013  
Publish: October 11, 2013

**ORDINANCE NO. 1473**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF BANNING, CALIFORNIA, REPEALING AND  
REPLACING SECTION 2.04.040 OF THE BANNING  
MUNICIPAL CODE RELATING TO CITY COUNCIL  
VACANCIES IN ORDER TO CONFORM WITH  
CALIFORNIA GOVERNMENT CODE SECTION 36512**

**WHEREAS**, on October 9, 2013, a vacancy arose on the Banning City Council. Under the current provisions of Banning Municipal Code (“BMC”) Section 2.04.040, this vacancy would require an April 8, 2014, special election to fill the vacancy should the City Council be otherwise unable to take action filling such vacancy by November 7, 2013; and

**WHEREAS**, the existing BMC Section 2.04.040 has become inconsistent with California Government Code Section 36512 (also pertaining to the filling of Council vacancies) because the Government Code has been amended by the legislature but there have been no corresponding amendments to the BMC; and

**WHEREAS**, the existing ordinance would require the City Council to take action to fill a vacancy by appointment sooner than the California Government Code requires. In the present circumstances, the BMC would force the Council to make an appointment by November 7, 2013, or else the Council is forced to fill the vacancy via special election on April 8, 2014. Under Government Code Section 36512, however, the Council would be allowed to consider the making of an appointment up to December 7, 2013, before having to call a special election. The Council finds that it is in the best interests of the City that the Council have the additional time allowed under State law to consider the making of an appointment to the Council vacancy, especially considering the need for application submittals and applicant review/interviews; and

**WHEREAS**, in order to avoid inconsistencies between the BMC and State law, and to provide the Council with the maximum amount of time allowable under State law to consider the filling of a Council vacancy, the BMC must be amended to be consistent with Government Code Section 36512.

**NOW THEREFORE, BE IT HEREBY ORDAINED** by the City Council of the City of Banning as follows:

**SECTION 1.** Section 2.040.040 of Chapter 2.04 is hereby repealed in its entirety and replaced with the following:

**“2.04.040 Filling a Vacated City Council Seat**

If a vacancy occurs in a city council seat, the vacancy shall be filled by the procedures set forth in California Government Code Section 36512, as such Government Code may be amended by the state legislature from time to time.”

**SECTION 2.** Immediate Effect.

Based on the findings and statements of fact set forth in the foregoing recitals, all of which are incorporated herein by this reference, this Ordinance shall take immediate effect pursuant to California Government Code Section 36937(a) as an ordinance “[r]elating to an election”.

**PASSED, APPROVED, AND ADOPTED** this 22<sup>nd</sup> day of October, 2013.

---

Debbie Franklin, Mayor

**ATTEST:**

---

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1473 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 22<sup>nd</sup> day of October, 2013, and was duly adopted at a regular meeting of said City Council on the 22<sup>nd</sup> day of October, 2013, by the following vote, to wit:

AYES:

NOES:

ABSEN:

ABSTAIN:

---

Marie A. Calderon, City Clerk  
City of Banning, California  
Banning, California

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**CITY COUNCIL AGENDA  
REPORT OF OFFICERS**

**DATE:** **October 22, 2013**

**TO:** **Honorable Mayor and City Council**

**FROM:** **Heidi Meraz, Community Services Director**

**SUBJECT:** **Report on Comprehensive Analysis of Pass Transit's Fixed Route Service, Commuter Routes, Express Routes and Dial-A-Ride Service by Transit Management and Design, Inc.**

**BACKGROUND:**

On May 28, 2013, the City Council approved Resolution No. 2013-58, accepting the proposal from and awarding the contract to Transportation Management and Design, Inc. (TMD) to perform a Comprehensive Analysis of Pass Transit's Fixed Route Service, Commuter Routes, Express Routes and Dial-A-Ride Service.

The objective of the Comprehensive Operational Analysis (COA) is to create the best transit network possible for Banning's Pass Transit customers within the available budget. The analysis is intended help to maximize the impact of taxpayer funding for transit by gaining better knowledge of our riders, improving efficiency, increasing connectivity other area transit providers and directing transit investment where it is most needed.

Representatives from TMD will be presenting an overview of the initial findings and progress on the project.

**Fiscal Impact:**

None

**PREPARED BY:**

  
Heidi Meraz

Community Services Director

**APPROVED BY:**



Andrew J. Takata  
City Manager

**REVIEWED BY:**



June Overholt, Deputy City Manager/  
Administrative Services Director



## CITY COUNCIL

**DATE:** October 22, 2013

**TO:** City Council

**FROM:** Zai Abu Bakar, Community Development Director

**SUBJECT:** Resolution No. 2013-91, "Approving the Award of a Professional Services Agreement to Aragon Geotechnical, Inc. for Robertson's Mine Reclamation Plan Review and Inspection Services"

**RECOMMENDATION:** Adopt Resolution No. 2013-91 awarding a Professional Services Agreement to Aragon Geotechnical, Inc. of Riverside, California, in an amount "Not to Exceed" \$32,040.00 for Robertson's Mine Reclamation Plan Review and Inspection Services.

**BACKGROUND:** Robertson's Quarry has been in operation since the 1950's and is currently operating under five (5) land use permits that were approved by the City. The permits are general in nature and exist independently of each other addressing aspects such as dust, light, noise, and hours of operations.

The Robertson's Quarry is regulated by the Surface Mining and Reclamation Act of 1975 (SMARA) which, according to the State of California, Department of Conservation, provides a comprehensive surface mining and reclamation policy with the regulation of surface mining operations to assure that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. SMARA also encourages the production, conservation, and protection of the state's mineral resources. Public Resources Code Section 2207 provides annual reporting requirements for all mines in the state.

To meet SMARA mandates, in prior years, the County of Riverside provided inspection and report services until recently, when the County notified the City that these services would no longer be provided. As a result, in June of 2012, in order for the City to remain in compliance with SMARA, a private engineering company Aragon Geotechnical, Inc. was contracted to perform the annual inspection services for calendar year 2012. Aragon Geotechnical completed a thorough investigation, documented various findings, and has demonstrated their ability to provide quality services through their preparation of the 2012 Annual Report. To remain in compliance, annual inspection reports are necessary. In order to continue with current processes, address existing compliance findings, and meet future reporting obligations, City Management is recommending continuing utilizing Aragon Geotechnical. This agreement will authorize the consultant to perform annual inspection services for calendar years 2013, 2014 and 2015, as well as, reviewing SMARA Reclamation Plan Review to address issues raised in the September 2012 Annual Inspection Report. The scope of work is further described in the Professional Services Agreement (Exhibit "A") attached hereto.

**FISCAL DATA:** The professional services provided by Aragon Geotechnical, Inc. will be funded by Robertson's Quarry in the amount of \$32,040, Account No. 002-0000-222.30-27.

**PREPARED BY:**



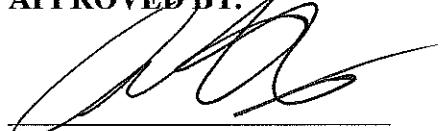
Zai Abu Bakar  
Community Development Director

**REVIEWED BY:**



June Overholt,  
Deputy City Manager /  
Administrative Services Director

**APPROVED BY:**



Andrew J. Takata  
City Manager

**Attachments:**

1. Draft Resolution No. 2013-91
2. Exhibit "A" Professional Services Agreement dated October 23, 2013.

## **ATTACHMENT 1**

**CITY COUNCIL RESOLUTION NO. 2013-91**

**RESOLUTION NO. 2013-91**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA APPROVING THE AWARD OF A PROFESSIONAL SERVICES  
AGREEMENT TO ARAGON GEOTECHNICAL, INC. FOR ROBERTSON'S MINE  
RECLAMATION PLAN REVIEW AND INSPECTION SERVICES**

**WHEREAS**, Robertson's Quarry has been in operation since the 1950's and is currently operating under five (5) land use permits that were approved by the City and the permits are general in nature and exist independently of each other addressing aspects such as dust, light, noise, and hours of operations; and

**WHEREAS**, the Robertson's Quarry is regulated by the Surface Mining and Reclamation Act of 1975 (SMARA) which, according to the State of California, Department of Conservation, provides a comprehensive surface mining and reclamation policy with the regulation of surface mining operations to assure that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition; and

**WHEREAS**, SMARA also encourages the production, conservation, and protection of the state's mineral resources. Public Resources Code Section 2207 provides annual reporting requirements for all mines in the state; and

**WHEREAS**, in prior years, the County of Riverside provided inspection and report services until recently, when the County notified the City that these services would no longer be provided; and

**WHEREAS**, in June of 2012, in order for the City to remain in compliance with SMARA, a private engineering company Aragon Geotechnical, Inc. was obtained to perform annual inspection services for Fiscal Year 2013; and

**WHEREAS**, to remain in compliance, City staff has determined that it is necessary to continue to contract services with Aragon Geotechnical and the approval of this agreement will authorize the consultant to perform annual inspection services for calendar years 2013, 2014 and 2015, as well as, a SMARA Reclamation Plan Review to address issues raised in the September 2012 Annual Inspection Report; the scope of work is further described in the Professional Services Agreement (Exhibit "A"); and

**WHEREAS**, the professional services agreement with Aragon Geotechnical, Inc. will be funded by Robertson's Quarry in the amount of \$32,040, Account No. 002-0000-222.30-27.

**NOW THEREFORE**, the City Council of the City of Banning does hereby find, determine, and resolve as follows:

**SECTION 1.** The Council approves the award of the Professional Services Agreement to Aragon Geotechnical of Riverside, California for Robertson's Mine Reclamation Plan Review to address issues raised in the September 2012 Annual Inspection Report and to perform annual Inspection for calendar years 2013, 2014, and 2015 in an amount "Not to Exceed" \$32,040.00.

**SECTION 2.** The Administrative Services Director is authorized to make necessary appropriations and account transfers to fund this agreement and appropriate funds deposited on behalf of the Robertson's Quarry for the purpose of funding the said Professional Services Agreement.

**SECTION 3.** The City Manager is authorized to execute the contract agreement with Aragon Geotechnical, Inc. of Riverside, California. This authorization will be rescinded if the contract agreement is not executed by the parties within ninety (90) days of the date of this resolution.

**PASSED, APPROVED AND ADOPTED** this 22nd day of October, 2013.

---

Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

---

Marie Calderon, City Clerk  
City of Banning, California

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

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David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-91 was duly introduced and adopted at a regular meeting of the City Council of the City of Banning, held on the 22nd day of October, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie Calderon, City Clerk  
City of Banning, California

## **ATTACHMENT 2**

### **EXHIBIT “A”**

#### **PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF BANNING AND ARAGON GEOTECHNICAL, INC.**

**AGREEMENT FOR CONTRACT SERVICES FOR RECLAMATION PLAN REVIEW  
AND INSPECTION SERVICES  
BETWEEN  
THE CITY OF BANNING, CALIFORNIA  
AND  
ARAGON GEOTECHNICAL**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 23rd day of October, 2013 by and between the City of Banning, a municipal corporation ("City") and Aragon Geotechnical, Inc., ("Consultant" or "Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties". (The term Contractor includes professionals performing in a consulting capacity.)

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONTRACTOR**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, 80

competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, Aragon 7-3-12

plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty.

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 Prevailing Wages.

Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement

of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Agreement Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

**ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed thirty two thousand and forty dollars (\$32,040.00) (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

## 2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

## 2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

## 2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

## 2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

# **ARTICLE 3. PERFORMANCE SCHEDULE**

## 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

### 3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

### 3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

### 3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section X, pertaining to indemnification and insurance, respectively.

### 3.5 Term.

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not beyond the date of December 31, 2015, except as otherwise provided in the Schedule of Performance (Exhibit "D").

## **ARTICLE 4. COORDINATION OF WORK**

### 4.1 Representatives and Personnel of Contractor.

The following principals of Contractor (Principals) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

C. Fernando Aragon \_\_\_\_\_ President \_\_\_\_\_  
(Name) (Title)

Martha M. Aragon \_\_\_\_\_ Vice President \_\_\_\_\_  
(Name) (Title)

Mark G. Doerschlag \_\_\_\_\_ Engineering Geologist \_\_\_\_\_  
(Name) (Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

#### 4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

#### 4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

**4.4 Independent Contractor.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

**4.5 Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of Agency.

**ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

**5.1 Insurance Coverages.**

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Interim Chief Administrative Officer or other designee of the City due to unique circumstances.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

## 5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not

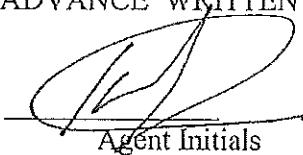
contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

  
Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3. .

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall

require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

#### 5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Contractor shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

#### 5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

### **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

#### 6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest.

#### 6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost

of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

#### 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

#### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other

discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

### **7.2 Disputes; Default.**

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **7.3 Retention of Funds.**

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

#### 7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

#### 7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

#### 7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of \_\_\_\_\_ N/A \_\_\_\_\_ (\$ \_\_\_\_\_ N/A \_\_\_\_\_) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

#### 7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such

as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

## ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times

avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

#### 8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

#### 8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

### **ARTICLE 9. MISCELLANEOUS PROVISIONS**

#### 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

#### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF BANNING, a municipal corporation

---

Andrew J. Takata, City Manager

ATTEST:

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Marie A. Calderon, City Clerk

**APPROVED AS TO FORM:**

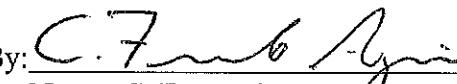
ALESHIRE & WYNDER, LLP

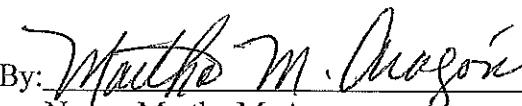
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David Aleshire, City Attorney

**CONTRACTOR:**

ARAGON GEOTECNICAL, INC.

By:   
Name: C. Fernando Aragon  
Title: President

By:   
Name: Martha M. Aragon  
Title: Vice President

Address: 16801 Van Buren Blvd.  
Riverside, CA 92504

Two signatures are required if a corporation.

**NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

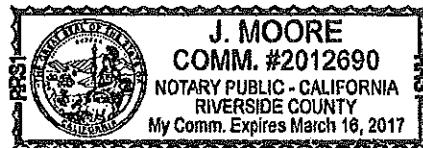
COUNTY OF

On July 9, 2013 before me, J. Moore, Notary Public, personally appeared C. Fernando Aragon, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that (he)she/they executed the same in (his) her/their authorized capacity(ies), and that by (his) her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: J. Moore



### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

INDIVIDUAL

CORPORATE OFFICER

President

TITLE(S)

TITLE OR TYPE OF DOCUMENT

PARTNER(S)

LIMITED

GENERAL

NUMBER OF PAGES

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER

DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

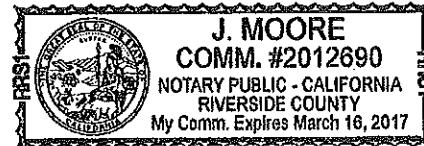
COUNTY OF

On July 9, 2013 before me, J. Moore, Notary Public, personally appeared Martha M. Aragon, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: J. Moore



### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

INDIVIDUAL  
 CORPORATE OFFICER  
Vice President  
TITLE(S)

PARTNER(S)  LIMITED  
  GENERAL

ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER

#### DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**I. Contractor will perform the following Services:**

A. Mining and reclamation plan reviews (If and when submitted to the City by mining project proponent):

- 1.) Map and Technical Report Review (2012 Inspection findings and PRC)
  - a.) SCE slope stability analysis.
  - b.) Reclamation slope stability analysis.
  - c.) Reclamation Plan review.
  - d.) Hydrology study review.
  - e.) Geotechnical report review, river dike.
  - f.) Geotechnical report review, West Pit water.
  - g.) Consultant response letter reviews.
- 2.) Analyses and Letters
  - a.) Review Letter for SCE slope stability analysis.
  - b.) Analyses and Review Letter for reclamation slope stability analysis, reclamation plan review, and geotechnical report review (West Pit water).
  - c.) Review Letter for hydrology study review.
  - d.) Review Letter for geotechnical report review, (river dike).
  - e.) Riverside County Flood Control consultations for the reclamation plan review and hydrology study review.
  - f.) City consultations and project management.
  - g.) Letter report reproduction.
- 3.) Optional Tasks (Pre-Authorization Request)
  - a.) Overage for extra work, additional City requests, or unexpected circumstances.

B. 2013, 2014 and 2015 Annual Surface Mine Inspection-Banning Quarry:

- 1.) Data acquisition, field inspections and operator meeting.
  - a.) Pre-inspection operators records requests.
  - b.) Pre-inspection coordination with the City of Banning Community Development Department.
  - c.) Aerial image interpretation and file update.
  - d.) Travel, R/T to mine.
  - e.) Site inspections.
- 2.) Report and Exhibits
  - a.) Prior-year inspection report reviews.

- b.) Operator annual FACE review.
- c.) Report preparation.
- d.) Photo exhibits and site plan.
- e.) Geotechnical services.
- f.) Report reproduction, copies and supplies.

C. Banning Quarry Meetings:

- 1.) Conference and Consultation – Reclamation Plan Review (non-recurring)
  - a.) Community Development and City Attorney Conference
  - b.) R/T Travel to 1/23 meeting
  - c.) Report preparation.
  - d.) SMGB & Irwindale guidelines reviews
  - e.) Consultation with Don Coduto (Irwindale TAC)
- 2.) City Meetings
  - a.) Planning Commission meeting attendance.
  - b.) City Council meeting attendance.

**II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the City:**

- A. Written notice of recommendations, corrective actions or violations concerning Surface Mining and Reclamation Act (SMARA) compliance and geotechnical hazards.
- B. Written opinion of proponent's approach for extended erosion protection of the spectrum separating the river from the mine pits.
- C. Written opinion of proponent's approach for extended erosion protection of the projecting Devers-El Casco "nose".
- D. Engineering Evaluation Report concerning Reclamation Plan conformance with SMARA utilizing the industry standards.
- E. Technical input related to staff reports for Planning Commission and City Council meeting.
- F. Annual Inspection Reports (2013, 2014, 2015 Calendar Years) including all records not limited to data requisitions, field inspection reports and so forth prepared using industry standards.
- G. Mining and reclamation plan reviews including map and technical reviews, and letters.

**III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City apprised of the status of performance by delivering the following status reports:**

Monthly status reports.

**IV. All work product are subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.**

**V. Contractor will utilize the following personnel to accomplish the Services:**

A. C. Fernando Aragon, Project Engineer, or designated personnel approved by the City.

B. Mark G. Doerschlag, Engineering Geologist, or designated personal approved by the City.

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

**Section 1.7, Warranty, is deleted in its entirety.**

**Section 2.3, Reimbursable Expenses, is deleted and replaced with the following:**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings. Meetings called due to petition or legal actions of the mine proponent are expressly excluded from the contract services but shall be compensated as extra work in accordance with Section 1.10.

**Section 7.7, Liquidated Damages, is deleted in its entirety.**

**EXHIBIT "C"**  
**COMPENSATION**

**I. Contractor shall perform the following tasks:**

**SCOPE & FEES, MINING AND RECLAMATION PLAN REVIEWS  
 BANNING QUARRY**

<u>Map &amp; Technical Report Reviews</u>		<u>Unit Costs (per pay grade)</u>
(1)	Map & Technical Report Reviews (2012 Inspection Findings and PRC §2712)	
(a)	SCE slope stability analysis, Sr. Geologist 4 hrs. @ \$120/hr. ....	\$480.00
(b)	Reclamation slope stability analysis, Sr. Geologist 6 hrs. @ \$120/hr .....	720.00
(c)	Reclamation Plan review (narrative & maps), Sr. Geologist 6 hrs. @ \$120/hr ...	720.00
(d)	Hydrology study review, Sr. Geologist 2 hrs. @ \$120/hr .....	240.00
(e)	Geotechnical report review, river dike, Sr. Geologist 2 hrs. @ \$120/hr .....	240.00
(f)	Geotechnical report review, West Pit water, Sr. Geologist 2 hrs. @ \$120/hr. ....	240.00
(g)	Consultant response letter reviews, Sr. Geologist 6 hrs. @ \$120/hr .....	720.00
	<b>Technical Reviews Total</b>	<b>\$3,360.00</b>
(2)	<u>Review Letters, Engineering, Office Support</u>	
(a)	Review Letter for 1(a), Sr. Geologist 4 hrs. @ \$120/hr .....	\$480.00
(b)	Analyses & Review Letter for 1(b-c,f), Sr. Geologist 8 hrs. @ \$120/hr. ....	960.00
(c)	Review Letter for 1(d), Sr. Geologist 2 hrs. @ \$120/hr. ....	240.00
(d)	Review Letter for 1(e), Sr. Geologist/Engr. 4 hrs. @ \$120/hr .....	480.00
(e)	RCFC Consultations for 1(c) and 1(d), Sr. Geologist 4 hrs. @ \$120/hr .....	480.00
(f)	2 <sup>nd</sup> Review Letters to consultant responses, Sr. Geologist 6 hrs. @ \$120/hr .....	720.00
(g)	City Consultations and Project Management, Sr. Geologist 6 hrs. @ \$120/hr ...	720.00
(h)	Geotechnical Assistant 8 hrs. @ \$45/hr. ....	360.00
(i)	Letter report reproduction, copies, supplies .....	180.00
	<b>Analyses, Letters, &amp; Office Subtotal</b>	<b>\$4,620.00</b>
(3)	<u>Optional Tasks (AGI Pre-Authorization Request)</u> Overage for Extra Work, City request or circumstance, T & M at AGI Fee Schedule . \$1,440.00 Based on ~20% of professional hour charges (12 hours).	
	<b>**Requested Total Authorization Amount</b>	<b>\$9,420.00</b>
<p>** Required services under the listed sub-categories may vary slightly depending upon mine operator's completeness in the reclamation plan submittal and topics needing to be addressed in review reports. AGI understands that initial submittals will probably be incomplete and has planned for primary reviews and second-round reviews of applicant or consultant responses. Item (3) is requested as an authorized amount to cover contingencies. Deposit-based fees charged to the mine operator may include the contingency amount subject to rebate if they are not expended. All actual professional hours and costs will be invoiced. If total aggregate charges are less than the authorization estimate, then the invoice total will be reduced accordingly.</p>		

**SCOPE & FEES, ANNUAL SURFACE MINE INSPECTIONS  
CALENDAR YEARS 2013, 2014, AND 2015  
BANNING QUARRY**

<b>Field Services, Per Annum</b>	<b>Unit Costs (per pay grade)</b>
(1) <b>Data Acquisition, Field Inspection &amp; Operator Meeting</b>	
(a) Pre-inspection operators records requests, Sr. Geologist 4 hrs. @ \$120/hr. ....	\$480.00
(b) Pre-inspection coordination with Banning CDD, Sr. Geologist 2 hrs. @ \$120/hr .	240.00
(c) Aerial image interpretation & file update, Sr. Geologist 2.0 hrs. @ \$120/hr .....	240.00
(d) Travel, R/T to mine, Sr. Geologist 1.5 hrs. @ \$120/hr .....	180.00
(e) Site inspection, Sr. Geologist 8 hrs. @ \$120/hr .....	<u>960.00</u>
<b>Field Total</b>	<b>\$2,100.00</b>
(2) <b>Report &amp; Exhibits Preparation, Office Support</b>	
(a) Prior-year Inspection Report Reviews, Sr. Geologist 4.0 hrs. @ \$120/hr .....	\$480.00
(b) Operator annual FACE review, Sr. Geologist 4.0 hrs. @ \$120/hr .....	480.00
(c) Report preparation, Sr. Geologist 16 hrs. @ \$120/hr .....	\$1,920.00
(d) Photo exhibits & site plan, Draftsman 4 hrs. @ \$75/hr.).....	300.00
(e) Geotechnical Assistant 4 hrs. @ \$45/hr. ....	180.00
(f) Report reproduction, copies, supplies .....	<u>320.00</u>
<b>Office Subtotal</b>	<b>\$3,680.00</b>
<b>**AGI Inspection Cost PER ANNUM</b>	<b>\$5,780.00</b>
<b>Requested 3-Year Contract Duration</b>	<u>  x 3</u>
<b>3-Year Total Inspection Costs</b>	<b>\$17,340.00</b>

\*\* Based on 2012 report model with required updated photographic exhibits, operations information, and revised Form MRRC-1. Lead Agency officials should be advised that the new MRRC-1 specifically requests information outside of AGI geotechnical or geologic expertise. Professionals in other technical disciplines may need to be consulted. We will fill out the form as completely as possible under revised OMR guidelines and with the noted limitations. The listed annual inspection cost may be used by the City in determining deposit amounts to be recovered from the mine operator.

**SCOPE & COSTS FOR CONSULTATIONS, MEETINGS,  
AND VIOLATION / CORRECTIVE ACTION COMPLIANCE REVIEWS  
BANNING QUARRY**

<u>Accrued Charges, January 23, 2013 to March 21, 2013</u>		<u>Unit Costs (per pay grade)</u>
(1)	<u>Conference &amp; Consultations</u>	
(a)	CDD and City Attorney Conf., 1/23, Sr. Geologist 2.5 hrs. @ \$120/hr. ....	\$300.00
(b)	R/T Travel to 1/23 meeting, Sr. Geologist 1.5 hrs. @ \$120/hr .....	180.00
(c)	Report Preparation (Deliverables) Sr. Geologist 1.0 hrs. @ \$120/hr .....	120.00
(d)	SMGB & Irwindale Guidelines reviews, Sr. Geologist 3.0 hrs. @ \$120/hr .....	360.00
(e)	Consultation with Prof. Don Coduto (Irwindale TAC), Sr. Geo 3-hrs. @ \$120/hr	<u>360.00</u>
	<b>Accrued Charges Total</b>	<b>\$1,320.00</b>
<u>Estimated Services (Dates &amp; Hours TBD)</u>		<u>Unit Costs (per pay grade)</u>
(2)	<u>City Meetings (scheduled year 2013)</u>	
(a)	Planning Commission meeting attendance, Sr. Geologist 4.0 hrs. @ \$120/hr ..	\$480.00
(b)	City Council meeting attendance, Sr. Geologist 4.0 hrs. @ \$120/hr .....	480.00
(c)	2 R/T travel, Sr. Geologist 3.0 hrs. @ \$120/hr .....	<u>360.00</u>
	<b>2013 Consultations and Meetings</b>	<b>\$1,320.00</b>
	<b>*2014 &amp; 2015 Compliance Review Meetings</b>	<b>\$2,640.00</b>
	<b>**Consultations &amp; Meetings Estimated Total</b>	<b>\$5,280.00</b>
<p>*Based on 8.0 hours senior geologist time budget and 2 R/T travel per annum, in support of mine operator's mitigation of SMARA violation or corrective action notices resulting from annual inspections.</p> <p>** Required services under the City Meetings category, and Compliance Review budget, may vary slightly depending upon attendance duration, requests for written deliverables, and mine operator's effective SMARA compliance. Overage amounts would be incorporated into the "Extra Services" authorized budget shown in Attachment A.</p>		

II. Payments will be made based upon the satisfactory completion of the task.

III. The budgeted amount for each Task is as follows: i) Mining and Reclamation Plan Reviews- Banning Quarry = \$9,420.00; ii) Annual Surface Mine Inspections, Calendar Years 2013, 2014, and 2015- Banning Quarry = \$17,340.00; and iii) Consultations, Meetings and Violation/ Corrective Action Compliance Reviews- Banning Quarry= \$5,280.00 for a total of budget of thirty two thousand and forty dollars (\$32,040.00).

- III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.**
- VI. The City will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:**
  - A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.**
  - B. Line items for all materials and equipment properly charged to the Services.**
  - C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.**
  - D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.**
- V. The total compensation for the Services shall not exceed \$32,040.00, as provided in Section 2.1 of this Agreement.**

**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**

**I. Contractor shall perform all services timely in accordance with the following schedule:**

Tasks	Performance Schedule
<p>A. Mining and reclamation plan reviews:</p> <p>1. Map and Technical Report Reviews (2012 Inspection Finding and PRC):</p> <ul style="list-style-type: none"> <li>a.) Pre-inspection operators records requests.</li> <li>b.) Pre-inspection coordination with the City of Banning Community Development Department.</li> <li>c.) Aerial image interpretation and file update.</li> <li>d.) Travel, R/T to mine.</li> <li>e.) Site inspections.</li> </ul> <p>2. Analyses and Letters:</p> <ul style="list-style-type: none"> <li>a.) Review Letter for SCE slope stability analysis.</li> <li>b.) Analyses and Review Letter for reclamation slope stability analysis, reclamation plan review, and geotechnical report review (West Pit water).</li> <li>c.) Review Letter for hydrology study review.</li> <li>d.) Review Letter for geotechnical report review, (river dike).</li> <li>e.) Riverside County Flood Control consultations for the reclamation plan review and hydrology study review.</li> <li>f.) City consultations and project management.</li> <li>g.) Letter report reproduction.</li> </ul>	Within two weeks of the report submittal unless otherwise agreed upon by the City and Consultant.
<p>B. 2013, 2014 and 2015 Annual Surface Mine Inspection-Banning Quarry:</p> <p>1. Data acquisition, field inspection and operator meeting:</p> <ul style="list-style-type: none"> <li>a.) Pre-inspection operators records requests.</li> <li>b.) Pre-inspection coordination with the City of Banning Community Development Department.</li> <li>c.) Aerial image interpretation and file update.</li> <li>d.) Travel, R/T to mine.</li> <li>e.) Site inspections.</li> </ul>	Within two weeks of the report submittal unless otherwise agreed upon by the City and Consultant.

<p>2. Reports and Exhibits:</p> <ul style="list-style-type: none"> <li>a.) Prior-year inspection report reviews.</li> <li>b.) Operator annual FACE review.</li> <li>c.) Report preparation.</li> <li>d.) Photo exhibits and site plan.</li> <li>e.) Geotechnical services.</li> <li>f.) Report reproduction, copies and supplies.</li> </ul>	
<p>C. Banning Quarry Meetings</p> <p>1. Conference and Consultation – Reclamation Plan Review (non-recurring):</p> <ul style="list-style-type: none"> <li>a.) Community Development and City Attorney Conference</li> <li>b.) R/T Travel to 1/23 meeting</li> <li>c.) Report preparation.</li> <li>d.) SMGB &amp; Irwindale guidelines reviews</li> <li>e.) Consultation with Don Coduto (Irwindale TAC)</li> </ul> <p>2. City Meetings</p> <ul style="list-style-type: none"> <li>a.) Planning Commission meeting attendance.</li> <li>b.) City Council meeting attendance.</li> </ul>	<p>To be determined at the reasonable discretion of the Contract Officer.</p>

**II. Contractor shall deliver the following tangible work products to the City by the following dates.**

- A. Written notice of recommendations, corrective actions or violations concerning SMARA compliance and geotechnical hazards, within two weeks of the report submittal.
- B. Written opinion of proponent's approach for extended erosion protection of the spectrum separating the river from the mine pits, within two weeks of the report submittal.
- C. Written opinion of proponent's approach for extended erosion protection of the projecting Devers-El Casco "nose," within two weeks of the report submittal.
- D. Engineering Evaluation Report concerning Reclamation Plan conformance with SMARA, within two weeks of the report submittal.
- E. Technical input related to staff reports for Planning Commission and City Council meeting, two weeks prior to scheduled meeting.

F. Annual Inspection Reports (2013, 2014, 2015 Calendar Years) including all records not limited to data requisitions, field inspection reports and so forth prepared using industry standards.

G. Mining and reclamation plan reviews including map and technical reviews, and letters.

**III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

## CITY COUNCIL AGENDA

**DATE:** **October 22, 2013**

**TO:** **City Council**

**FROM:** **Duane Burk, Director of Public Works**

**SUBJECT:** **Resolution No. 2013-97, "Awarding the Construction Contract for Project No. 2013-03, 'Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repllier Park (5.BN26-12)' and Rejecting all other Bids"**

**RECOMMENDATION:** Adopt City Council Resolution No. 2013-97:

- I. Awarding the Construction Contract for Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repllier Park (5.BN26-12)" to Avi-Con Inc. dba CA Construction of Riverside, California for an amount of "Not to Exceed" \$627,000.00 and authorize an additional 10% contingency of \$63,000.00 to cover any unforeseen project conditions.
- II. Approving the Professional Services Agreement with HP Engineering of Redlands, California, for Engineering Staking Services for an amount of "Not to Exceed" \$15,000.00.
- III. Authorizing staff to request an advance in the City's future Community Development Block Grant (CDBG) funding and the reprogramming of unused CDBG funds to Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repllier Park (5.BN26-12)" in order to cover the funding shortfall.
- IV. Authorizing the Administrative Services Director to make the necessary budget adjustments and appropriations for this project.
- V. The City Manager is authorized to execute the contract agreement with Avi-Con Inc., dba CA Construction of Riverside, California and the Professional Services Agreement with HP Engineering of Redlands, California for Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repllier Park (5.BN26-12)." This authorization will be rescinded if the contract agreements are not executed within forty-five (45) days of the date of this resolution.

**JUSTIFICATION:** Avi-Con Inc., dba CA Construction of Riverside, California is the lowest responsive and responsible bidder to construct Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repllier Park (5.BN26-12)." In addition, this is to assist the City meet their Strategic Plan Goal #5, Quality of Life, Strategic Priority Action Step, K-5, Lions and Repllier Park Improvements.

**BACKGROUND:** The City receives CDBG funding on an annual basis. Currently, the City has approximately \$513,275.00 in the CDBG Fund allocated for the Repplier Park Bowl Project which has been accumulated since 2009. Typically, the City is required to spend CDBG funding within two (2) years of receiving the funding, therefore it is important that the City spend the CDBG fund balance in order to avoid the forfeiture of said funds.

In 2010, using CDBG funding, the City completed the design of the Repplier Park Bowl. Since the completion of the design staff has submitted several grant applications in order to fund the construction of the Repplier Park Bowl, which has an estimated construction cost of \$4,900,000.00. The scope of work of Project No. 2013-03 includes the construction of the parking lot originally designed with the Repplier Park Bowl project.

Similarly to the Repplier Park Bowl project, the Lions Park Soccer Fields project was designed in 2007, but was unable to be fully funded for construction. In an effort to provide additional parking stalls, improved parking circulation and ADA compliant handicap parking stalls, staff included the construction of the parking lot, originally designed with the Lions Park Soccer Fields project, in the scope of work of Project No. 2013-03.

City staff advertised Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)" on August 9, 2013 and August 23, 2013 as shown in Exhibit "A". On September 4, 2013, the City Clerk received ten (10) bids and publicly opened and read out loud the following results, as shown in Exhibit "A":

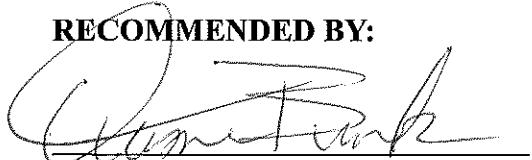
<u>Contractor</u>	<u>Total Bid</u>
1. Avi-Con, Inc., dba CA Construction, Riverside, CA	\$627,000.00
2. Roadway Engineering, Mira Loma, CA	\$668,274.70
3. BW Simmons, Inc., Calimesa, CA	\$679,922.10
4. Byrom-Davey, Inc., San Diego, CA	\$763,797.75
5. Cooley Construction, Hesperia, CA	\$769,817.30
6. Matich Corporation, Highland, CA	\$787,000.00
7. The Van Dyke Corporation, Twentynine Palms, CA	\$830,252.10
8. Laird Construction, Rancho Cucamonga, CA	\$875,578.00
9. Adams Mallory Construction, Placentia, CA	\$961,222.00
10. Torres Construction, Los Angeles, CA	\$1,040,359.00

The bid results were transmitted to the Riverside County Economic Development Agency (EDA) for review of completeness and conformance with regulatory requirements and subsequently the EDA authorized the City to award the project.

**FISCAL DATA:** The total project cost is \$711,530.68, which includes engineering services, advertisements and a 10% contingency. There is currently an amount of \$513,275.00 available in the CDBG Fund. It is anticipated that the city will receive additional funding of approximately \$198,255.68 from the EDA.

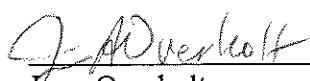
**[SIGNATURES ON NEXT PAGE]**

**RECOMMENDED BY:**



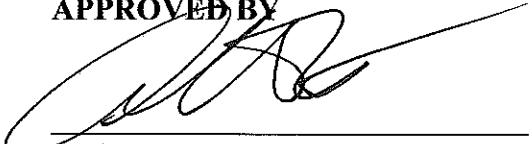
Duane Burk  
Director of Public Works

**REVIEWED BY:**



June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY**



Andrew J. Takata  
City Manager

**RESOLUTION NO. 2013-97**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, "AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2013-03, 'CONSTRUCTION OF PARKING LOT IMPROVEMENTS AT LIONS PARK (5.BN21-11) AND REPPLIER PARK (5.BN26-12)' AND REJECTING ALL OTHER BIDS"**

**WHEREAS**, the City receives a Community Development Block Grant (CDBG) on an annual basis; and

**WHEREAS**, the City has approximately \$513,275.00 in the CDBG Fund which has been accumulated since 2009, typically, the City is required to spend CDBG funding within two (2) years of receiving the funding, therefore it is important that the City spend the CDBG fund balance in order to avoid the forfeiture of said funds; and

**WHEREAS**, in 2010, using CDBG funding, the City completed the design of the Repplier Park Bowl and has submitted several grant applications in order to fund the construction of the Repplier Park Bowl, which has an estimated construction cost of \$4,900,000.00, but has been unable to acquire the additional funding needed to construct the project; and

**WHEREAS**, similarly to the Repplier Park Bowl project, the Lions Park Soccer Fields project was designed in 2007, but was unable to be fully funded for construction; and

**WHEREAS**, City staff advertised Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)" on August 9, 2013 and August 23, 2013 as shown in Exhibit "A" and subsequently on September 4, 2013, the City Clerk received ten (10) bids and publicly opened and read out loud the results, as shown in Exhibit "B"; and

**WHEREAS**, Avi-Con Inc., dba CA Construction of Riverside, California is the lowest responsible bidder to construct Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)"; and

**WHEREAS**, the City retained HP Engineering to provide engineering design of the project which is now economical and efficient to have HP Engineering perform the construction staking services for an amount "Not to Exceed" \$15,000.00; and

**WHEREAS**, the Riverside County Economic Development Agency (EDA) has encouraged the City to move forward with the award of the project and utilize the advances available to the City.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

**SECTION 1.** City Council adopts Resolution No. 2013-97, awarding the Construction Contract for Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11)

and Repplier Park (5.BN26-12)" to Avi-Con Inc., dba CA Construction of Riverside, California for an amount equal to \$627,000.00, allowing a 10% contingency of \$63,000.00 and rejecting all other bids.

**SECTION 2.** City Council approves the Professional Services Agreement for Engineering Staking Services with HP Engineering of Redlands, California, for an amount of "Not to Exceed" \$15,000.00.

**SECTION 3.** Authorizing staff to request an advance in the City's future Community Development Block Grant (CDBG) funding and the reprogramming of unused CDBG funds to Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)" in order to cover the funding shortfall.

**SECTION 4.** The Administrative Services Director is authorized to make the necessary budget adjustments and appropriations for this project.

**SECTION 5.** The City Manager is authorized to execute the contract agreement with Avi-Con Inc., dba CA Construction of Riverside, California and the Professional Services Agreement with HP Engineering of Redlands, California for Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)." This authorization will be rescinded if the contract agreements are not executed within forty-five (45) days of the date of this resolution.

**PASSED, ADOPTED AND APPROVED** this <sup>th</sup> day of October, 2013.

---

Deborah Franklin, Mayor  
City of Banning

ATTEST:

---

Marie A. Calderon, City Clerk

APPROVED AS TO FORM AND  
LEGAL CONTENT:

---

David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-97 was duly adopted by the City Council of the City of Banning at the regular meeting thereof held on the <sup>th</sup> day of October, 2013, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Marie A. Calderon, City Clerk  
City of Banning, California

**EXHIBIT "A"**

**NOTICE INVITING TO BID AND BID RESULTS**

**PROJECT NO. 2013-03**

**"CONSTRUCTION OF PARKING LOT IMPROVEMENTS AT LIONS  
PARK (5.BN21-11) AND REPPLIER PARK (5.BN26-12)"**

**PRESS ENTERPRISE  
08/09 and 08/23, 2013**

# Record Gazette

218 N. Murray St  
Banning, CA 92220  
951-849-4586

## Proof of Publication

(2015.5 C.C.P.)

### Inviting to Bid – Project # 2013-03

**State of California)**  
**County of Riverside) ss.**

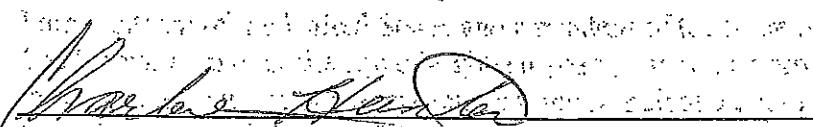
I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No: 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

08/ 9, 2013

Executed 08/ 9, 2013

At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Signature

NOTICE INVITING TO BID  
PROJECT NO. 2013-03  
CONSTRUCTION OF  
PARKING LOT  
IMPROVEMENTS AT  
LIONS' PARK  
(5.BN21-11)  
AND REPLIER  
PARK (5.BN26-12)  
IN THE CITY OF BANNING  
PROJECT DESCRIPTION: The scope of work under this project includes the demolition of existing improvements, grading, construction of sidewalks, driveways, curb and gutter, handicap ramps, A.C. overlay, parking lot improvements including PCC paving, installation of lights, underground electrical conduit and pre-cast concrete vaults, signing and striping, all in accordance with the City of Banning and Caltrans Standard Specifications. The Contractor must comply with all NPDES requirements to reduce storm water run-off by implementing applicable BMPs, as required by the Public Works Inspector. PLANS & SPECS: Full size drawings and specifications may be obtained at the City of Banning, Engineering Division, 99 E. Ramsey Street, Banning, California 92220 between the hours from 7:00 a.m. - 5:00 p.m. City Hall is closed every Friday. Cost Per Set: \$75.00/Non-refundable. Deposit: \$15.00/Per Set. Shipping/Handling Per Set: \$15.00/Non-refundable. charge. Total Cost Per Set: \$90.00. NON-MANDATORY PRE-BID/CONFERENCE: July 31, 2013 at 10:00 a.m. at the City of Banning, City Hall, 99 E. Ramsey St., Banning. Another Pre-Bid Conference will be held on August 20, 2013 at 10:00 a.m. REQUIREMENTS / FEDERAL FUNDING: This project is being financed with Community Development Block Grant funds from the U.S. Department of Housing and Urban Development (24 CFR Part 570) and subject to certain requirements including compliance with Section 3 (24 CFR Part 135), Economic Opportunity requirements, payment of Federal Davis-Bacon prevailing wages, Federal Labor Standards Provisions, (HUD 4010), Executive Order #11246, and others. Information pertaining to the Federal requirements is on file with the County of Riverside Economic Development Agency. The Federal minimum wage rate requirements, as predetermined by the Secretary of Labor, are set forth in the books issued for bidding purposes, referred to herein as Project Bid Documents (Special Federal Provisions), and in copies of this book which may be examined at the office described above where the project

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JUL 2013

# Record Gazette

218 N. Murray St  
Banning, CA 92220  
951-849-4586

## Proof of Publication

(2015.5 C.C.P.)

### Inviting to Bid – Project # 2013-03

**State of California)**  
**County of Riverside) ss.**

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

08/ 9, 2013

Executed 08/ 9, 2013

At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

above City Hall address;  
Attn: City Clerk  
Dated: 08/05/2013  
CITY OF BANNING, CALIFORNIA  
Marie A. Calderon  
City Clerk  
Publication Date:  
08/08/2013 - 08/23/2013  
Published in The Record Gazette  
No. 92580  
08/09, 2013

plans, special provisions, and proposal forms may be seen. Addenda to modify the minimum wage rates, if necessary, will be issued to holders of the Project Bid Documents, Certified Payroll, Bid Bond, Payment and Performance Bond, Insurance, etc., per the approved specifications. Pursuant to the provisions of Public Contract Code Section 3300, the City has determined that the Contractor shall possess a valid Class A license at the time that the Contract is awarded. Failure to possess the specified license shall render the bid as not responsible and/or non-responsive and shall act as a bar to award the Contract to any bidder not possessing said license at the time of award. **SEALED BIDS DUE: September 4, 2013 and Opened Publicly at 10:00 a.m. local time, at the**

  
Signature

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**EXHIBIT “B”**

**SUMMARY OF BIDS RECEIVED**  
**CITY OF BANNING**

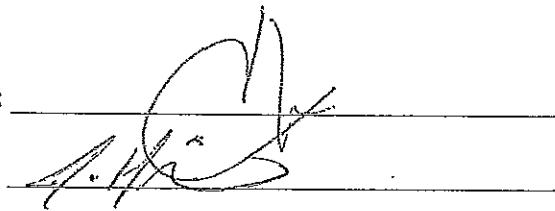


PROJECT NO.: 2013-03

DESCRIPTION: Construction of Parking Lot Improvements at  
Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)

BID OPENING DATE: September 4, 2013 TIME: 10:00 a.m.

NAME OF BIDDER:	ADDEND UM #1	BID BOND		TOTAL BID AMOUNT:
MATICH CORPORATION Highland, CA				<u>\$787,000.00</u>
COOLEY CONSTRUCTION Hesperia, CA				<u>\$769,817.30</u>
THE VAN DYKE CORP. 29 Palms, CA				<u>\$830,252.10</u>
LAIRD CONSTRUCTION Rancho Cucamonga, CA				<u>\$875,578.00</u>
ADAMS/MALLORY CON. Placentia, CA				<u>\$961,222.00</u>
B.W. SIMMONS, INC. Calimesa, CA				<u>\$679,922.10</u>
TORRES CONSTRUCTION Los Angeles, CA				<u>\$1,040,359.00</u>
AVI-CON, INC. Riverside, CA				<u>\$627,000.00</u>
BYROM-DAVEY, INC. San Diego, CA				<u>\$763,797.75</u>
ROADWAY ENGINEERING Mira Loma, CA				<u>\$668,274.10</u>

VERIFIED BY: 

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## **CITY COUNCIL/BANNING UTILITY AUTHORITY AGENDA**

**DATE:** **October 22, 2013**

**TO:** **Banning Utility Authority**

**FROM:** **Duane Burk, Director of Public Works**

**SUBJECT:** **Resolution No. 2013-19 UA, "Approving the First Amendment to the Professional Services Agreement for the Whitewater Flume Restoration Project with Roy McDonald, Environmental and Regulatory Consultant"**

**RECOMMENDATION:** The Banning Utility Authority adopts Resolution No. 2013-19 UA:

- I. Approve the First Amendment to the Professional Services Agreement with Roy McDonald, Environmental and Regulatory Consultant in an amount of \$88,435.00 for additional professional services related to the Whitewater Flume Restoration Project for a total contract amount "Not to Exceed" \$168,035.00, attached hereto as Exhibit "J."

**JUSTIFICATION:** It is necessary to amend the professional services agreement with Roy McDonald, Environmental and Regulatory Consultant to assist the City with meeting Goal #3, Infrastructure and City Facilities, Action Step E-3, Restoration of the Whitewater Diversion Pipeline Flume, of the City's Strategic Plan 2011-201..

**BACKGROUND:** On January 8, 2013 the Banning Utility Authority adopted Resolution No. 2013-01 UA, approving "Awarding a Professional Services Agreement for the Whitewater Flume Restoration Project for a total contract in the amount of \$56,000.00 to cover a list of tasks and services including assisting the City with a United States Forest Service Special Use Permit (SUP) for Fiscal Year 2013.

- January 15, 2013, the Forest Service issued a denial letter (Exhibit A) stating that the proposal submitted by the City was not consistent with the Land Management Plan.
- March 14, 2013, a joint meeting was held at the Forest Service Office in San Bernardino, with the Forest Service, Southern California Edison, City of Banning, Banning Heights Mutual Water Company, and San Gorgonio Pass Water Agency (Participating Entities, P.E.'s) to discuss the denial. It was then determined it was necessary to go forward with the FERC.
- April 9, 2013, the Banning Utility Authority adopted Resolution No. 2013-09 UA (Exhibit B), which approved the additional services necessary and modifications to the Agreement which included assisting the City with the application process of the FERC power license.
- June 5, 2013, FERC dismissed the City's application for licensing (Exhibit C).
- June 14, 2013, the Forest Service issued a letter to Southern California Edison regarding the SUP that expired on December 31, 2012 and was terminated, asking for a plan for removal of the Burnt Canyon Pipeline (Exhibit D).
- July 1, 2013, City of Banning requested a rehearing on the licensing application (Exhibit E).

- July 9, 2013, Draft Application for License was sent out for a mandatory 90-day Review and Comment Period (Exhibit F).
- July 18, 2013, the P.E.'s met at the Southern California Edison office in San Dimas, regarding the Forest Service termination of the Burnt Canyon use permit and amending the Surrender Application or other action Southern California Edison might take to support the City of Banning's License Application. It was agreed to apply to the FERC.
- August 7, 2013, another meeting was held at the Forest Service office in San Bernardino, with Southern California Edison, the P.E.'s, Forest Service, City of Banning Councilmember Art Welch, City of Banning City Manager Andrew J. Takata, two (2) representatives from Congressman Cook's office, and attorneys for Southern California Edison, Forest Service and the City of Banning.
- August 15, 2013, the City of Banning filed the Notice Of Preparation (NOP) – CEQA with the FERC office (Exhibit G).
- August 21, 2013, the Order Granting a Rehearing for Further Consideration was received from FERC for the City's licensing application (Exhibit H).
- September 11, 2013, Southern California Edison received a one (1) year extension for the pipeline removal (Exhibit I).
- September 12, 2013, FERC held a joint meeting with the Forest Service, Southern California Edison and the P.E.'s to hear the issues concerning the Whitewater Flume.
- As a result of that public meeting, additional services will be required for evaluation of current field conditions, assist with Forest Service negotiations, obtaining Long-Term Easement (LTE) for water supply.

As a result of the numerous meetings with Southern California Edison, Forest Service, FERC and the Participating Entities, it has been determined that additional services are required to continue the Restoration of the Whitewater Flume Project. Staff respectfully requests approval for additional funding in the amount of \$88,435.00, necessary for additional services to the scope of services under the Professional Services Agreement with Roy McDonald, Environmental and Regulatory Consulting Services, for a total contract amount of \$168,035.00. These services are expected to cover September 2013- December 31, 2013. Once completed, the project will be re-evaluated to determine if additional services are necessary. If required, staff will bring additional items to the City Council for review and approval.

**FISCAL DATA:** The full amount is available in the Water Capital Facility Fund Account No. 661-6300-471.90-78 to fund this First Amendment to the Professional Services Agreement with Roy McDonald, Environmental and Regulatory Consultant. The total contract is for an amount "Not to Exceed" \$168,035.00 unless otherwise approved by the Banning Utility Authority.

**[SIGNATURES ON NEXT PAGE]**

**RECOMMENDED BY:**



Duane Burk  
Director of Public Works

**REVIEWED BY:**



June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**



Andrew J. Takata  
City Manager

## **RESOLUTION NO. 2013-19 UA**

### **A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR THE WHITEWATER FLUME RESTORATION PROJECT WITH ROY MCDONALD, ENVIRONMENTAL AND REGULATORY CONSULTANT**

**WHEREAS**, on January 8, 2013 the Banning Utility Authority adopted Resolution No. 2013-01 UA, approving a Professional Services Agreement with Roy McDonald, Environmental and Regulatory Consultant in the amount of \$56,000.00 to cover a list of tasks and services including assisting the City with a United States Forest Service permit for Fiscal Year 2013; and

**WHEREAS**, on January 15, 2013, the Forest Service issued a denial letter stating that the proposal submitted by the City was not consistent with the Land Management Plan; and

**WHEREAS**, on March 14, 2013, a joint meeting was held at the Forest Service Office in San Bernardino, with the Forest Service, Southern California Edison, City of Banning, Banning Heights Mutual Water Company, and San Gorgonio Pass Water Agency (Participating Entities, P.E.'s) to discuss the denial. It was then determined it was necessary to go forward with the FERC; and

**WHEREAS**, on April 9, 2013, the Banning Utility Authority adopted Resolution No. 2013-09 UA (Exhibit B), which approved the additional services necessary and modifications to the Agreement which included assisting the City with the application process of the FERC power license; and

**WHEREAS**, on June 5, 2013, FERC dismissed the City's application for licensing; and

**WHEREAS**, on June 14, 2013, the Forest Service issued a letter to Southern California Edison regarding the SUP that expired on December 31, 2012 and was terminated, asking for a plan for removal of the Burnt Canyon Pipeline; and

**WHEREAS**, on July 1, 2013, City of Banning requested a rehearing on the licensing application; and

**WHEREAS**, on June 14, 2013, the Forest Service issued a letter to Southern California Edison regarding the SUP that expired on December 31, 2012 and was terminated, asking for a plan for removal of the Burnt Canyon Pipeline; and

**WHEREAS**, on July 9, 2013, Draft Application for License was sent out for a mandatory 90-day Review and Comment Period; and

**WHEREAS**, on July 18, 2013, the P.E.'s met at the Southern California Edison office in San Dimas, regarding the Forest Service termination of the Burnt Canyon use permit and amending the Surrender Application or other action Southern California Edison might take to support the City of Banning's License Application, it was agreed to apply to the FERC; and

**WHEREAS**, on August 7, 2013, another meeting was held at the Forest Service office in San Bernardino, with Southern California Edison, the P.E.'s, Forest Service, City of Banning Councilmember Art Welch, City of Banning City Manager Andrew J. Takata, two (2) representatives from Congressman Cook's office, and attorneys for Southern California Edison, Forest Service and the City of Banning; and

**WHEREAS**, on August 15, 2013, the City of Banning filed the Notice Of Preparation (NOP) – CEQA with the FERC office; and

**WHEREAS**, on August 21, 2013, the Order Granting a Rehearing for Further Consideration was received from FERC for the City's licensing application; and

**WHEREAS**, on September 11, 2013, Southern California Edison received a one (1) year extension for the pipeline removal; and

**WHEREAS**, on September 12, 2013, FERC held a joint meeting with the Forest Service, Southern California Edison and the P.E.'s to hear the issues concerning the Whitewater Flume; and

**WHEREAS**, as a result of that public meeting, additional services will be required for evaluation of current field conditions, assist with Forest Service negotiations, obtaining Long-Term Easement (LTE) for water supply; and

**WHEREAS**, the scope of work for the additional services includes, but is not limited to, the following: assist with implementing the City's responsibilities under its Agreement with Southern California Edison on the Whitewater Flume Project, evaluating current field conditions, negotiating a settlement with the Forest Service to obtain a Long-Term Easement (LTE) for water supply, conduct public scoping meetings/workshops, carrying out CEQA NOP process, reviewing and evaluating comments on the City's Draft Application, filing, progress reports and other relevant information with FERC; and

**WHEREAS**, staff respectfully requests approval of the additional funding for the Professional Services Agreement with Roy McDonald for Environmental and Regulatory Consulting Services in an amount of \$88,435.00 for a total contract amount of \$168,035.00 in order to continue moving forward with the City of Banning's Strategic Plan, Goal #3 Infrastructure and City Facilities, Priority Action Step E-3; and

**WHEREAS**, these services are expected to cover September 2013 through December 31, 2013 and once completed the project will be re-evaluated to determine if additional services are necessary.

**NOW, THEREFORE, BE IT RESOLVED** by the Banning Utility Authority of the City of Banning as follows:

**SECTION 1.** The additional funding for the Professional Services Agreement with Roy McDonald for Environmental and Regulatory Consulting Services for the Whitewater Flume Restoration project is approved in the amount of \$88,435.00 for a total contract amount "Not to Exceed" \$168,035.00.

**SECTION 2.** The City Manager is authorized to execute the additional funding for the professional Services Agreement with Roy McDonald for the Whitewater Flume Restoration Project. This authorization will be rescinded if the parties do not execute the contract agreement within Ninety (90) days of this resolution.

**PASSED, ADOPTED AND APPROVED** this 22<sup>nd</sup> day of October, 2013.

---

Deborah Franklin, Chairman  
Banning Utility Authority

**ATTEST:**

---

Marie A. Calderon, Secretary  
Banning Utility Authority

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

David J. Aleshire, Authority Counsel  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, Secretary to the Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-19 UA was adopted by the Utility Authority of the City of Banning at its Joint Meeting thereof held on the 22<sup>nd</sup> day of October, 2013, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, Secretary  
Banning Utility Authority

**EXHIBIT A**

**FOREST SERVICE DENIAL LETTER**

**JANUARY 15, 2013**



United States  
Department of  
Agriculture

Forest  
Service

San Bernardino National Forest  
Supervisor's Office

602 South Tippecanoe Ave.  
San Bernardino, CA 92408  
Phone: 909-383-5588  
Fax: 909-383-5770  
TTD: 909-383-5616

CITY OF BANNING

File Code: 2700

Date:

JAN 28 2013

JAN 15 2013

Duane Burk  
Public Works Director  
City of Banning  
99 E. Ramsey Street  
Banning, CA 92220

PUBLIC WORK DEPT.

**CERTIFIED MAIL - RETURN  
RECEIPT REQUESTED**  
NUMBER: 7004 2510 0001 5578 0988

Dear Mr. Burk,

I am writing in response to your application for transportation and utility facilities on federal lands for the Whitewater Flume Project. I have reviewed your application according to the first and second level screening process established in 36 CFR 251.54. The screening criteria are enclosed for your reference.

Your proposal would convert the water works associated with the San Gorgonio Hydroelectric Project to a water supply project. The proposal includes repairing all diversion structures to prevent leaks, installing new pipelines, installing "blow-offs", repairing the remaining canals, developing temporary work areas, and expanding permanent work areas.

The proposal does not meet first level screening item 2 (36 CFR 251.54(e)(1)(ii)), which requires that:

*The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan prepared under the National Forest Management Act and 36 CFR part 219.*

The forest land and resource management plan (LMP) has a number of applicable standards and guidelines which the current proposal is not consistent with, including:

- S46: Surface water diversions and groundwater extractions, including wells and spring developments will only be authorized when it is demonstrated by the user, and/or agreed to by the Forest Service, that the water extracted is excess to the current and reasonably foreseeable future needs of forest resources (LMP Part 3, page 10).
  - The proposed project would extract all the available water except for some high flow events, leaving no water for what would otherwise be a perennial stream system. Forest resources require a sustained flow of water to support a perennial riparian habitat.
- S48: For non-hydroelectric and exempt hydroelectric surface water development proposals, instream flows favorable to the maintenance and restoration of riparian dependent and aquatic resources and channel conditions will be required (LMP Part 3, page 11).
  - The proposed project does not provide any instream flows.



- S49: Require fish passage instream flows associated with dams and impoundments where fish passage will enhance or restore native or selected nonnative fish distribution and not cause adverse effects to other native species (LMP Part 3, page 11).
  - The proposed project does not propose flows to enhance or restore native or nonnative species.

I have also reviewed your proposal against the second level screening criteria. The regulations require that an authorized officer shall reject any proposal if the officer determines that any of the second level screening criteria apply. I have determined that second level screening, item 1 (36 CFR 251.54(e)(5)(i)) applies. Item 1 states:

*The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses*

As described in the LMP, the Whitewater River area is managed to support 24.2 miles of an eligible Wild and Scenic River. In addition, the Whitewater River supports the character of the San Gorgonio Wilderness.

The LMP describes the desired condition and program emphasis for these area(s):

- *"San Gorgonio Place is maintained as a naturally evolving and natural appearing landscape...Habitat conditions for threatened, endangered and sensitive species are improving over time. Habitat linkages are intact and functioning... Enhancement of plant and wildlife habitat and linkage corridors for threatened, endangered and sensitive species will be emphasized in all management activities... Wildlife corridors will be maintained or enhanced. Minimum in-stream flows and groundwater standards will be established for wildlife and to ensure that water use is managed at environmentally sustainable levels..." (LMP Part. 2 pg. 87 & 88)*
- This proposal would not allow the landscape to evolve as rapidly over time due to aquatic resource impacts and limitations of available water to flora and fauna, ultimately impacting wildlife corridor connectivity and groundwater recharge.

The San Gorgonio Wilderness is in close proximity to the proposed location of the three diversions. This wilderness is one of the most heavily used in the nation.

Based on outstandingly remarkable scenery and wildlife values, most of the Whitewater River, including portions of its various forks is eligible for classification as a wild river. The river corridor supports a large amount of quality (remote, pristine, designated wilderness) and diverse habitat for regionally significant populations of Nelson's bighorn sheep (California rare), California spotted owl (Region 5 sensitive species, federal candidate), mule deer and black bear. Only small portions downstream of the SCE FERC license impoundments are not free-flowing, and thus must be currently managed differently than the remaining river course.

Your proposal would not be compatible with these uses.

Second level screening, item 2 states:

*The proposed use would not be in the public interest*

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This criterion is further defined by forest service policy and direction. Uses that can be accommodated on lands under other ownership are not in the public interest. The City of Banning does not depend on this source of water in order to be a sustained water purveyor for the communities served. According to the City of Banning General Plan (Ch. IV, 2006), local groundwater has a minimum reliable capacity of 23,860 acre-feet per year (AFY). In 2003, water use was 10,053 AF from groundwater, indicating nearly 14,000 AFY is available and not utilized. Additional water is available through agreement with the San Gorgonio Pass Water Agency, which is importing water from the California State Water Project. The current SCE FERC diversion supplies an average of 1,500 AFY for the Banning Bench, where the primary use is irrigation. The water taken from this diversion is excess to the user, reducing the overall operating cost to the purveyor, and not a critical need due to the availability of other water sources in the area. The proposed use would not be in the public interest because it could be accommodated on other lands.

In summary, your proposal is not accepted because it is inconsistent with the Land Management Plan, incompatible with the purposes for which the lands are managed, and not in the public interest. Thank you for your time. If you have further questions, please contact Jerry Sirski, Forest Special Uses Program Manager at 909-382-2887.

Sincerely,



JODY NOIRON  
Forest Supervisor

**Enclosure**

Excerpts from the Code of Federal Regulations

§ 251.54 Proposal and application requirements and procedures

(e) Pre-application actions—(1) Initial screening. Upon receipt of a request for any proposed use other than for noncommercial group use, the authorized officer shall screen the proposal to ensure that the use meets the following minimum requirements applicable to all special uses:

- (i) The proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable State and local health and sanitation laws.
- (ii) The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan prepared under the National Forest Management Act and 36 CFR part 219.
- (iii) The proposed use will not pose a serious or substantial risk to public health or safety.
- (iv) The proposed use will not create an exclusive or perpetual right of use or occupancy.
- (v) The proposed use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System lands.
- (vi) The proponent does not have any delinquent debt owed to the Forest Service under terms and conditions of a prior or existing authorization, unless such debt results from a decision on an administrative appeal or from a fee review and the proponent is current with the payment schedule.
- (vii) The proposed use does not involve gambling or providing of sexually oriented commercial services, even if permitted under State law.
- (viii) The proposed use does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded.

Code of Federal Regulations / Title 36 - Parks, Forests, and Public Property / Vol. 2 / 2012-07-01360

(ix) The proposed use does not involve disposal of solid waste or disposal of radioactive or other hazardous substances.

(5) Second-level screening of proposed uses. A proposal which passes the initial screening set forth in paragraph (e)(1) and for which the proponent has submitted information as required in paragraph (d)(2)(ii) of this section, proceeds to second-level screening and consideration. In order to complete this screening and consideration, the authorized officer may request such additional information as necessary to obtain a full description of the proposed use and its effects. An authorized officer shall reject any proposal, including a proposal for commercial group uses, if, upon further consideration, the officer determines that:

- (i) The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses; or
- (ii) The proposed use would not be in the public interest; or

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- (iii) The proponent is not qualified; or
- (iv) The proponent does not or cannot demonstrate technical or economic feasibility of the proposed use or the financial or technical capability to undertake the use and to fully comply with the terms and conditions of the authorization; or
- (v) There is no person or entity authorized to sign a special use authorization and/or there is no person or entity willing to accept responsibility for adherence to the terms and conditions of the authorization.

**EXHIBIT B**  
**BANNING UTILITY AUTHORITY**  
**RESOLUTION NO. 2013-09UA**  
**APRIL 9, 2013**

**RESOLUTION NO. 2013-09 UA**

**A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING ADDITIONAL FUNDING FOR THE PROFESSIONAL SERVICES AGREEMENT FOR THE WHITEWATER FLUME RESTORATION PROJECT WITH ROY MCDONALD, ENVIRONMENTAL AND REGULATORY CONSULTANT**

**WHEREAS**, on January 8, 2013 the Banning Utility Authority adopted Resolution No. 2013-01 UA, approving a Professional Services Agreement with Roy McDonald, Environmental and Regulatory Consultant in the amount of \$56,000.00 to cover a list of tasks and services including assisting the City with a United States Forest Service permit for Fiscal Year 2013; and

**WHEREAS**, as a result of the Forest Service letter dated January 15, 2013 (attached as Exhibit "B"), the proposal submitted by the City was not consistent with the Land Management. It has been determined it is necessary to go forward with the FERC; and

**WHEREAS**, therefore, additional services are necessary and modifications to the Agreement include assisting the City with the application process of the FERC power license; and

**WHEREAS**, the scope of work for the additional services includes, but is not limited to, the following: prepare the Draft Application for the License, circulate the Draft Application for the License, consult with key Agencies, prepare the Final Application for License, respond to Post-Filing Review Comments, respond to FERC Deficiency Notices and respond to FERC additional information request; and

**WHEREAS**, staff respectfully requests approval of the additional funding for the Professional Services Agreement with Roy McDonald for Environmental and Regulatory Consulting Services in an amount of \$23,600.00 for a total contract amount of \$79,600.00; and

**WHEREAS**, these services are expected to cover the Fiscal Year 2013 period and once completed the project will be re-evaluated to determine if additional services are necessary.

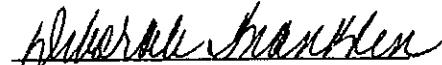
**NOW, THEREFORE, BE IT RESOLVED** by the Banning Utility Authority of the City of Banning as follows:

**SECTION 1.** The additional funding for the Professional Services Agreement with Roy McDonald for Environmental and Regulatory Consulting Services for the Whitewater Flume Restoration project is approved in the amount of \$23,600.00 for a total contract amount "Not to Exceed" \$79,600.00.

**SECTION 2.** The Administrative Services Director is authorized to appropriate funds from the Water Capital Facility Fund to Account No. 661-6300-471.33-11 (Professional Services), in the amount of \$23,600.00 and is authorized to make necessary budget adjustments related to these funds.

SECTION 3. The City Manager is authorized to execute the additional funding for the professional Services Agreement with Roy McDonald for the Whitewater Flume Restoration Project. This authorization will be rescinded if the parties do not execute the contract agreement within Ninety (90) days of this resolution.

**PASSED, APPROVED AND ADOPTED** this 9<sup>th</sup> day of April, 2013.



Deborah Franklin, Chairman  
Banning Utility Authority

**ATTEST:**



Marie A. Calderon, Secretary

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**



David J. Aleshire, Authority Counsel  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, Secretary to the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-09 UA was duly adopted by the Banning Utility Authority of the City of Banning, California at its joint meeting thereof held on the 9th day of April, 2013, by the following vote, to wit:

AYES: Boardmembers Botts, Miller, Peterson, Welch, Chairman Franklin

NOES: None

ABSENT: None

ABSTAIN: None



Marie A. Calderon, Secretary  
Banning Utility Authority  
City of Banning, California

RESOLUTION NO. 2013-09 UA

**Forest Service Letter**  
Dated January 15, 2013



United States  
Department of  
Agriculture

Forest  
Service

San Bernardino National Forest  
Supervisor's Office

602 South Tippecanoe Ave.  
San Bernardino, CA 92408  
Phone: 909-383-5588  
Fax: 909-383-5770  
TTD: 909-383-5616

## CITY OF BANNING

File Code: 2700

Date:

JAN 22 2013

JAN 15 2013

Duane Burk  
Public Works Director  
City of Banning  
99 E. Ramsey Street  
Banning, CA 92220

PUBLIC WORK DEPT.

CERTIFIED MAIL - RETURN  
RECEIPT REQUESTED  
NUMBER: 7004 2510 0001 5578 0988

Dear Mr. Burk,

I am writing in response to your application for transportation and utility facilities on federal lands for the Whitewater Flume Project. I have reviewed your application according to the first and second level screening process established in 36 CFR 251.54. The screening criteria are enclosed for your reference.

Your proposal would convert the water works associated with the San Gorgonio Hydroelectric Project to a water supply project. The proposal includes repairing all diversion structures to prevent leaks, installing new pipelines, installing "blow-offs", repairing the remaining canals, developing temporary work areas, and expanding permanent work areas.

The proposal does not meet first level screening item 2 (36 CFR 251.54(e)(1)(ii)), which requires that:

*The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan prepared under the National Forest Management Act and 36 CFR part 219.*

The forest land and resource management plan (LMP) has a number of applicable standards and guidelines which the current proposal is not consistent with, including:

- S46: Surface water diversions and groundwater extractions, including wells and spring developments will only be authorized when it is demonstrated by the user, and/or agreed to by the Forest Service, that the water extracted is excess to the current and reasonably foreseeable future needs of forest resources (LMP Part 3, page 10).
  - The proposed project would extract all the available water except for some high flow events, leaving no water for what would otherwise be a perennial stream system. Forest resources require a sustained flow of water to support a perennial riparian habitat.
- S48: For non-hydroelectric and exempt hydroelectric surface water development proposals, instream flows favorable to the maintenance and restoration of riparian dependent and aquatic resources and channel conditions will be required (LMP Part 3, page 11).
  - The proposed project does not provide any instream flows.



Caring for the Land and Serving People

Printed on Recycled Paper

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- S49: Require fish passage instream flows associated with dams and impoundments where fish passage will enhance or restore native or selected nonnative fish distribution and not cause adverse effects to other native species (LMP Part 3, page 11).
  - The proposed project does not propose flows to enhance or restore native or nonnative species.

I have also reviewed your proposal against the second level screening criteria. The regulations require that an authorized officer shall reject any proposal if the officer determines that any of the second level screening criteria apply. I have determined that second level screening, item 1 (36 CFR 251.54(e)(5)(i)) applies. Item 1 states:

*The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses*

As described in the LMP, the Whitewater River area is managed to support 24.2 miles of an eligible Wild and Scenic River. In addition, the Whitewater River supports the character of the San Gorgonio Wilderness.

The LMP describes the desired condition and program emphasis for these area(s):

- *"San Gorgonio Place is maintained as a naturally evolving and natural appearing landscape...Habitat conditions for threatened, endangered and sensitive species are improving over time. Habitat linkages are intact and functioning... Enhancement of plant and wildlife habitat and linkage corridors for threatened, endangered and sensitive species will be emphasized in all management activities... Wildlife corridors will be maintained or enhanced. Minimum in-stream flows and groundwater standards will be established for wildlife and to ensure that water use is managed at environmentally sustainable levels..." (LMP Part. 2 pg. 87 & 88)*
- This proposal would not allow the landscape to evolve as rapidly over time due to aquatic resource impacts and limitations of available water to flora and fauna, ultimately impacting wildlife corridor connectivity and groundwater recharge.

The San Gorgonio Wilderness is in close proximity to the proposed location of the three diversions. This wilderness is one of the most heavily used in the nation.

Based on outstandingly remarkable scenery and wildlife values, most of the Whitewater River, including portions of its various forks is eligible for classification as a wild river. The river corridor supports a large amount of quality (remote, pristine, designated wilderness) and diverse habitat for regionally significant populations of Nelson's bighorn sheep (California rare), California spotted owl (Region 5 sensitive species, federal candidate), mule deer and black bear. Only small portions downstream of the SCE FERC license impoundments are not free-flowing, and thus must be currently managed differently than the remaining river course.

Your proposal would not be compatible with these uses.

Second level screening, item 2 states:

*The proposed use would not be in the public interest*

This criterion is further defined by forest service policy and direction. Uses that can be accommodated on lands under other ownership are not in the public interest. The City of Banning does not depend on this source of water in order to be a sustained water purveyor for the communities served. According to the City of Banning General Plan (Ch. IV, 2006), local groundwater has a minimum reliable capacity of 23,860 acre-feet per year (AFY). In 2003, water use was 10,053 AF from groundwater, indicating nearly 14,000 AFY is available and not utilized. Additional water is available through agreement with the San Gorgonio Pass Water Agency, which is importing water from the California State Water Project. The current SCE FERC diversion supplies an average of 1,500 AFY for the Banning Bench, where the primary use is irrigation. The water taken from this diversion is excess to the user, reducing the overall operating cost to the purveyor, and not a critical need due to the availability of other water sources in the area. The proposed use would not be in the public interest because it could be accommodated on other lands.

In summary, your proposal is not accepted because it is inconsistent with the Land Management Plan, incompatible with the purposes for which the lands are managed, and not in the public interest. Thank you for your time. If you have further questions, please contact Jerry Sirski, Forest Special Uses Program Manager at 909-382-2887.

Sincerely,



JODY NOIRON

Forest Supervisor

**Enclosure**

Excerpts from the Code of Federal Regulations

§ 251.54 Proposal and application requirements and procedures

(e) Pre-application actions—(1) Initial screening. Upon receipt of a request for any proposed use other than for noncommercial group use, the authorized officer shall screen the proposal to ensure that the use meets the following minimum requirements applicable to all special uses:

- (i) The proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable State and local health and sanitation laws.
- (ii) The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan prepared under the National Forest Management Act and 36 CFR part 219.
- (iii) The proposed use will not pose a serious or substantial risk to public health or safety.
- (iv) The proposed use will not create an exclusive or perpetual right of use or occupancy.
- (v) The proposed use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System lands.
- (vi) The proponent does not have any delinquent debt owed to the Forest Service under terms and conditions of a prior or existing authorization, unless such debt results from a decision on an administrative appeal or from a fee review and the proponent is current with the payment schedule.
- (vii) The proposed use does not involve gambling or providing of sexually oriented commercial services, even if permitted under State law.
- (viii) The proposed use does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded.

Code of Federal Regulations / Title 36 - Parks, Forests, and Public Property / Vol. 2 / 2012-07-01360

(ix) The proposed use does not involve disposal of solid waste or disposal of radioactive or other hazardous substances.

(5) Second-level screening of proposed uses. A proposal which passes the initial screening set forth in paragraph (e)(1) and for which the proponent has submitted information as required in paragraph (d)(2)(ii) of this section, proceeds to second-level screening and consideration. In order to complete this screening and consideration, the authorized officer may request such additional information as necessary to obtain a full description of the proposed use and its effects. An authorized officer shall reject any proposal, including a proposal for commercial group uses, if, upon further consideration, the officer determines that:

- (i) The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses; or
- (ii) The proposed use would not be in the public interest; or

- (iii) The proponent is not qualified; or
- (iv) The proponent does not or cannot demonstrate technical or economic feasibility of the proposed use or the financial or technical capability to undertake the use and to fully comply with the terms and conditions of the authorization; or
- (v) There is no person or entity authorized to sign a special use authorization and/or there is no person or entity willing to accept responsibility for adherence to the terms and conditions of the authorization.

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**EXHIBIT C**

**FERC DISMISSAL NOTICE TO THE CITY OF BANNING**

**JUNE 5, 2013**

143 FERC ¶ 62,170  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

City of Banning, California

Project No. 14520-000

ORDER DISMISSING LICENSE APPLICATION

(June 5, 2013)

1. On May 7, 2013, the City of Banning, California (Banning) filed an application for a license for the proposed Whitewater Flume Water Power Project No. 14520-000. The proposed project would be located on the San Gorgonio River, in San Bernardino and Riverside Counties, California. Banning seeks a license to operate and maintain project facilities currently under a license issued to Southern California Edison Company (SCE) for the San Gorgonio Hydroelectric Project No. 344.<sup>1</sup>

**Background**

2. The Commission issued a license for SCE's Project No. 344 in 1983, with an expiration date of April 26, 2003. However, the project has not generated power since 1998. The deadline to file an application to relicense the San Gorgonio Project was April 26, 2001. Despite a notice of intent to file a relicense application, SCE ultimately did not seek a new license for this project.<sup>2</sup> Therefore, on July 9, 2001, the Commission solicited applications from potential applicants other than the existing licensee and when no one filed a timely license application, required SCE to file a surrender application. SCE submitted its surrender application on September 28, 2010.<sup>3</sup>

3. The San Gorgonio Project occupies approximately 246 acres of federal lands administered by the U.S. Forest Service within the San Bernardino National Forest. The project generated electricity by diverting water from the Whitewater River and the Black

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<sup>1</sup> *Southern California Edison Co.*, 23 FERC ¶ 61,240 (1983) (issuing new license).

<sup>2</sup> See 18 C.F.R. § 16.25 (2012).

<sup>3</sup> Surrender application was supplemented on November 3, 2010, September 17, 2012, and November 7 and 21, 2012.

**EXHIBIT D**

**FOREST SERVICE LETTER TO SOUTHERN CALIFORNIA EDISION**

**REQUESTING REMOVAL PLAN**

**JUNE 14, 2013**



United States  
Department of  
Agriculture

Forest  
Service

San Bernardino National Forest  
Supervisor's Office

602 South Tippecanoe Ave  
San Bernardino, CA 92408  
Phone: 909-382-2600  
Fax: 909-383-5770  
TTD: 909-383-5616

File Code: 2720  
Date: June 14, 2013

Danielle Chupa  
Manager, Eastern Hydro Division  
300 N. Lone Hill Avenue  
San Dimas, CA 91773

Dear Ms. Chupa,

The Special Use Permit (CAJ4116) for a temporary water transmission line, originally issued in June 2002 and reissued in August 2008, expired on December 31, 2012 and has terminated. Continuance of this use is not authorized and removal of these improvements and restoration to the site must occur according to the terms of the permit. Please reference clauses II. A, E; V. D of the permit:

**II. TENURE AND ISSUANCE OF A NEW PERMIT**

*A. Expiration at the End of the Authorized Period. This permit will expire at midnight on 12/31/2012. Expiration shall occur by operation of law and shall not require notice, any decision document, or any environmental analysis or other documentation.*

*E. Discretion of Forest Service. Notwithstanding any provisions of any prior or other permit, the authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued. The decision whether to issue a new permit to a holder or successor in interest is at the absolute discretion of the Forest Service.*

**V. TERMINATION, REVOCATION, AND SUSPENSION**

*D. Removal of Improvements. Prior to abandonment of the improvements or within a reasonable time following revocation or termination of this authorization, the holder shall prepare, for approval by the authorized officer, an abandonment plan for the permit area. The abandonment plan shall address removal of improvements and restoration of the permit area and prescribed time frames for these actions. If the holder fails to remove the improvements or restore the site within the prescribed time period, they become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all cost associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.*

Please submit a draft abandonment (rehabilitation) plan that addresses removal of the improvements and restoration of the permit area for review by July 1, 2013. Once approved, a temporary special use permit will be issued authorizing the deconstruction and rehabilitation activities. The rehabilitation actions must be completed by January 1, 2014.

If you have any questions, please contact Jason Collier, Lands & Special Uses, at: [jpcollier@fs.fed.us](mailto:jpcollier@fs.fed.us), 909-382-2869.

Sincerely,

JODY NOIRON  
Forest Supervisor

Cc: Gabe Garcia, District Ranger



Caring for the Land and Serving People

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**EXHIBIT E**

**CITY OF BANNING REQUEST FOR REHEARING TO FERC**

**JULY 1, 2013**

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

CITY OF BANNING, CALIFORNIA, ) Project No. 344  
\_\_\_\_\_  
PETITIONER ) Project No. 14520

REQUEST FOR REHEARING OF ORDER DISMISSING LICENSE APPLICATION

DUANE BURK  
DIRECTOR OF PUBLIC WORKS  
CITY OF BANNING, CALIFORNIA  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220-0998  
(951) 922-3130

Dated: July 1, 2013

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

CITY OF BANNING, CALIFORNIA, ) Project No. 344  
\_\_\_\_\_  
PETITIONER ) Project No. 14520

REQUEST FOR REHEARING OF ORDER DISMISSING LICENSE APPLICATION

The City of Banning ("City") files this Request for Rehearing of the June 5, 2013, Order Dismissing License Application ("Order") issued by the Federal Energy Regulatory Commission ("Commission") for the Whitewater Flume Water Power Project, FERC No. 14520, which proposes to use facilities that are components of the San Gorgonio Nos. 1 and 2 Project, FERC No. 344. The facilities are City assets per agreements dating back to 1913 and are proposed per a pending surrender application to be repaired by the current Project No. 344 licensee, Southern California Edison Company ("SCE") and transferred to the City for continued operation and maintenance.

Communication with respect to this filing should be sent to:

Duane Burk  
Director of Public Works  
City of Banning, California  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220-0998  
(951) 922-3130

And,

Roy McDonald  
2743 14th Street  
Sacramento, CA 95818  
(916) 826-9858

## REQUEST FOR HEARING

### Error in the Commission's Order

1. Reason for Dismissal: On June 5, 2013, the Director of Hydropower Licensing ("Director") dismissed the City's May 7, 2013, Application for License for the Whitewater Flume Water Power Project ("License Application")<sup>1</sup> because the proposed project "would use facilities proposed to be surrendered and removed." The Order cited another Commission proceeding in which a preliminary permit application was dismissed because it would use Project No. 606 facilities that were proposed by Pacific Gas & Electric Company ("PG&E") to be surrendered and removed.<sup>2</sup>

2. Error in the Order: The City's Whitewater Flume Water Power Project, however, would use facilities that the current Project No. 344 licensee, SCE, has agreed to repair and transfer to the City for continued operation and maintenance for power generation and water supply under a new license.<sup>3</sup> Furthermore, and for these reasons, SCE's September 28, 2010, Application for Surrender of License ("Surrender Application") for Project No. 344 specifically proposed to repair and transfer the facilities to the City for continued operation and maintenance. It is not correct, therefore, to assert the Whitewater Flume Water Power Project "would use facilities proposed to be surrendered and removed."<sup>4</sup> Furthermore, there are additional important

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<sup>1</sup> The City filed the License Application under FERC Project No. 344 because the City believes SCE's Surrender Application and the City's License Application comprise two parts of a single proposed action and should be considered concurrently by the Commission. The Commission, however, refers to the City's License Application as Project No. 14520.

<sup>2</sup> *Fall River Valley Cnty. Serv. Dist.*, 143 FERC ¶ 61,047 (2013) (affirming the dismissal of a preliminary permit application for a project that would use facilities proposed to be surrendered and removed). This preliminary permit application was filed in connection with the surrender of Pacific Gas & Electric Company's ("PG&E") Kilarc-Cow Project, FERC No. 606.

<sup>3</sup> June 30, 2010, Transfer Agreement ("2010 Agreement") signed by SCE, City, BHMWC, and SGPWA (see Appendix A of SCE's Application for Surrender of License, September 28, 2010). Under 2010 Agreement Section 4(a) the City has the option to pursue using the facilities for water supply under a Forest Service permit or using the facilities for combined water supply and power generation under a FERC license.

<sup>4</sup> SCE Surrender Application, e.g. Page 1-1: "SCE intends to decommission (which includes abandoning in place) selected FERC licensed Project facilities, repair/replace selected FERC-licensed Project facilities, and after the license surrender is effective, transfer ownership of the facilities not decommissioned or retained (including recently re-constructed elements that are outside of the jurisdiction of the FERC license) to the San Gorgonio Pass Water Agency (a California special district), Banning Heights Mutual

facts that support accepting the City's License Application that were not considered in the Commission's Order but should have been. These facts are described in the Statement of Issues that follows.

3. Requested Actions: In considering the error in the Order and the several related issues described below, the City asks the Commission to: 1) grant the City's request for a rehearing on the Commission's Order; 2) reinstate the City's License Application to assure consistency with existing agreements, enhance National Environmental Policy Act ("NEPA") compliance, and avoid redundant reviews of complete information and analyses; 3) waive the 90-day draft review requirement for the City's License Application to avoid unnecessary duplication of effort and redundant review cycles; 4) accept the City's License Application for filing; 5) allow 60 days for City and SCE to amend SCE's Surrender Application to eliminate references to Forest permitting for a non-power project; 6) revise the Commission's Draft EA for Project No. 344 to consider the City's plan to operate the repaired and transferred facilities for power generation; and 7) consider the surrender and license applications concurrently.

#### Statement of Issues

4. There are several reasons why the City believes the May 7, 2013, License Application should be reinstated and why the City's License Application should be considered concurrently with SCE's Surrender Application. Central to the reasons are the existing agreements between the City and SCE and the City's preexisting water rights to Project No. 344 water. In addition, there are recent developments that the City believes necessitates amendments to SCE's Surrender Application and associated revisions to the Commission's April 22, 2013, DEA to assure consistency with existing agreements and water rights. The issues are organized into the following subsections:

- Agreements and Water Rights
- Organization of the Surrender Application
- New Developments and Needed Amendments and Revisions
- Timeliness of the City's License Application
- Need For Concurrent Consideration

#### Agreements and Water Rights

5. The Facilities are City Assets that Cannot be Ordered Removed: It is important for the Commission to understand that all of the Project No. 344 facilities are City assets per

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Water Company (a California mutual benefit corporation), and the City of Banning (a California municipal corporation), collectively known as Participating Entities."

agreements with SCE dating back to 1913, are necessary to access the City's historic pre-1914 appropriative water rights, and although improved over the years, they pre-date SCE's federal licensing for power generation<sup>5</sup>. For these reasons, the City does not agree that the Commission has the authority to order the removal of these facilities without City concurrence. And, as entered into the record via the City's May 7, 2013, License Application and the City's April 30, 2013, comments on the Commission's DEA for Project No. 344 surrender, and SCE's September 28, 2010, Surrender Application, the City does not concur with the removal of the Project No. 344 facilities that are necessary to exercise the City's water rights, to continue to deliver water to the communities that are dependent on project water, and to generate electric power at Powerhouse No. 2 ("Pine Powerhouse").

6. The Historic Agreements Create a Bond between Surrender and Licensing: The agreements between the City and SCE create a bond between the City's License Application and SCE's Surrender Application that does not exist in connection with the preliminary permit application and PG&Es Project No. 606 surrender application cited in the Order. The historic agreements of 1913 and 1933 include commitments by the City to share maintenance costs with SCE and a commitment by SCE, under circumstances that have come to pass, to transfer full ownership of the Project No. 344 facilities to the City for continued operation and maintenance. The Commission has long recognized SCE's commitment to deliver the Project No. 344 water to the City and Banning Heights Mutual Water Company ("BHMWC"), in compliance with historic, pre-1914 appropriative water rights, and to assure public health and safety in the communities that depend on this water. The Commission also, in 2004, recognized the need to allow a significant amount of time for SCE, City, BHMWC, and San Gorgonio Pass Water Agency ("SGPWA") to negotiate a new agreement to address regulatory and repair-related issues that were not anticipated in the historic agreements. The result of these negotiations was a June 30, 2010, Transfer Agreement ("2010 Agreement") that anticipates SCE's filing of a Surrender Application and the City's filing of a License Application to obtain the regulatory approvals necessary to repair and transfer Project No. 344 facilities to the City.

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<sup>5</sup> The original project facilities were City assets initially used for water supply, but agreement was reached with SCE's predecessor company in 1913 to add power generating facilities. A 1933 agreement added a second powerhouse. In exchange for the revenue from power generation, the power company agreed to pay 90 percent of the project maintenance costs, deliver water to the City and BHMWC consistent with the preexisting water rights, and, in the event the power company no longer wished to operate and maintain the project, transfer full ownership of the project to the City. The 2010 Transfer Agreement ("2010 Agreement") implements the 1913 and 1933 agreements considering regulatory processes and documentation that were not anticipated in the earlier agreements.

## Organization of the Surrender Application

7. The 2010 Agreement Sets the Stage for a Single Integrated Proposed Action: The 2010 Agreement established a way forward that included SCE and the City jointly developing SCE's Surrender Application, cooperating in designing and implementing the repairs to selected facilities, cooperating in all aspects of licensing and permitting, and in transferring the repaired facilities and associated properties to the City either for water supply or for water supply and power generation. Among other things, SCE and the City agreed it was important for the Exhibit E Environmental Report contained in SCE's Surrender Application to evaluate the whole of the proposed action including the City's continued operation and maintenance of the specified Project No. 344 facilities. Consistent with NEPA, this analytical methodology was carried forward through the Commission's surrender process, most recently appearing in the Commission's DEA, which included an evaluation of the effects of the City continuing to operate and maintain the specified Project No. 344 facilities and determined the effects to be minor and temporary. Furthermore, as the City reads the DEA, the City's recent decision to restore power generation will have no significant environmental effects and will actually avoid some effects identified as minor.<sup>6</sup>

8. The 2010 Agreement is Guide for the Facilities to be Decommissioned or Transferred: The 2010 Agreement is the product of almost nine years of negotiations and is the primary source of clarification regarding SCE and City consensus on which Project No. 344 facilities are to be removed and/or decommissioned and which are to be transferred. The section of the 2010 Agreement entitled "Recitals" speaks to the rationale for the City allowing the removal and/or decommissioning of several facilities that were made redundant when a damaged section of Flowline No. 1 was abandoned and the Project No. 344 layout was changed in 2005 to include a new dam and pipeline in Burnt Canyon. The change was necessary to restore water deliveries to the community of Banning Heights. The redundant facilities include a damaged section of Flowline No. 1, Penstock No. 1, and the generating equipment in the Big Oaks Powerhouse. The "Recitals" section of the 2010 Agreement provides guidance on the facilities to be removed and/or decommissioned and was used in preparing SCE's Surrender Application. The list of facilities to be transferred is also contained in the 2010 Agreement in Exhibit A, "Bill of Sale." The Project No. 344 facilities listed on the "Bill of Sale" include all of the facilities needed for continued operation of the project for water supply and for generating power in the Pine Powerhouse. This list provides on-going guidance on the facilities that need to be addressed for transfer in SCE's Surrender Application. The "Bill of Sale" includes the electric generating equipment in the Pine Powerhouse and supports Section 4(a) of the 2010 Agreement which gives the City the option to pursue a Commission license for a combined water supply and

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<sup>6</sup> Construction-related impacts from removing the Powerhouse No. 2 tailrace would be avoided.

power generation project.<sup>7</sup> Now that the City has decided to pursue a license to generate power, the City is exercising its option to include the electric generating equipment in the Pine Powerhouse in the transfer. The City also wishes to repair and transfer Tank No. 2, which is also associated with electric generation at the Pine Powerhouse. Tank No. 2 was not specifically mentioned in the "Bill of Sale" or the "Recitals," but is important to assure efficient generation in the Pine Powerhouse. The above will necessitate several relatively minor amendments to SCE's Surrender Application and to the Commission's DEA, as described in the City's April 30, 2013, comments on the DEA. The need for these revisions and the need to reflect on what was anticipated in the 2010 Agreement relates to recent changes in Forest Service policy, as discussed in the following.

#### New Developments and Needed Amendments and Revisions

9. Forest Permit for a Non-Power Project No Longer an Option: There is a recent development with respect to the Forest Service's position regarding proposals for water supply projects on Forest Service lands that the Commission was apparently not aware of and did not consider in the Order. In a letter of January 15, 2013, the Forest Service rejected the City's December 8, 2011, permit application to continue to operate the project for water-supply-only (non-power). The Forest Service did not evaluate the permit application in detail, but rejected it out of hand based on an initial screening with respect to Land Management Plan ("LMP") consistency. The Forest Service's decision was unexpected by the City given the record of ten years of consultation and considering the Forest Service's initial screening took 13 months to complete.<sup>8</sup> The City was also informed the Forest Service's decision is not reviewable.

10. Impact of Recent Forest Service Policy Change on the 2010 Agreement: The Forest Service policy decision eliminates the option identified in Section 4(a) of the 2010 Agreement for the City to operate the project facilities for water supply under a non-power Forest Service Permit. The City and SCE had every reason to believe this was a viable option when the 2010

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<sup>7</sup> "a. License Surrender and Transfer, SCE shall proceed with due diligence in seeking approval from FERC for surrender of the license for the San Gorgonio Hydroelectric Project No. 344. SCE shall proceed with due diligence to obtain all other approvals related to the license surrender from federal, state, and local agencies with jurisdiction over the Project or the Facilities. However, if the Participating Entities file with FERC an application for a new license, then SCE shall take appropriate steps to facilitate the transfer of the Project to the Participating Entities. For example, SCE may need to withdraw its surrender application and file an application to transfer the existing license to the Participating Entities."

<sup>8</sup> The City filed an application for a permit with Forest Service on December 8, 2011, and after receiving no response for 13 months was informed in a January 15, 2013, letter by Forest Service that a water supply only project had been rejected out of hand during first level screening and would not be further reviewed: "In summary, your proposal is not accepted because it is inconsistent with the Land Management Plan, incompatible with the purposes for which the lands are managed, and not in the public interest. Thank you for your time."

Agreement was signed. Forest Service representatives participated in the negotiations with the City and SCE and offered no objection to including the non-power option. Now that a Forest Service permit for a non-power project is no longer an option, the only option that remains viable is for the City to file a License Application with the Commission. For this reason the City will need to work with SCE, as anticipated in Section 4(a) of the 2010 Agreement, to amend the proposed action contained in SCE's Surrender Application. References to a non-power project under Forest Service permit would be deleted and the Pine Powerhouse and associated facilities would be transferred for power generation. The City asks the Commission to allow 60 days for the City and SCE to consider the necessary amendments and to file a report with the Commission.

11. LMP Consistency for Renewable Energy Projects: Had the Forest Service formulated its position earlier, the 2010 Agreement and subsequent filings would not have included consideration of a Forest Service permit for a water-supply-only non-power project. In any event, based on further discussion with the Forest Service and review of relevant documents, the City believes Forest Service plans and policies remain supportive of renewable energy projects, but that water supply project applications have proliferated in recent years and have raised a number of different plan and policy consistency issues. As a result, there is a need now to amend SCE's Surrender Application and the Commissions DEA to include transferring the Pine Powerhouse and associated facilities, including Tank No. 2, for electric power generation. The City wants to emphasize that the need for these amendments is driven by the 2010 Agreement and the Forest Service having eliminated the option of operating the facilities without generating power.

#### Timeliness of the City's License Application

12. The City Asks Commission for Flexibility on Timing of License Application: The Commission's Order refers briefly to the Commission's filing timeliness requirements for a new license application for an existing project and concludes the City's License Application was not consistent with these requirements because it was filed more than 18 months after the August 15, 2001, Notice of Intent was filed.<sup>9</sup> The City believes, however, that several other process milestones should be equally considered that support acceptance of the City's License Application when filed and that now support its reinstatement. The City, BHMWC, and SGPWA

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<sup>9</sup> As noted in SCE's Surrender Application: "On August 20, 2001, a notice of intent was filed by the San Gorgonio Pass Water Agency (Pass Agency) to file an application for new license on the San Gorgonio Hydroelectric Power Project. The Pass Agency, Banning Heights Mutual Water Company (Banning Heights), City of Banning (Banning) (referred to herein as the Participating Entities) completed First Stage Consultation and elements of Second Stage Consultation before suspending further licensing activity pending completion of a June 30, 2010, Transfer Agreement (Agreement) with SCE."

have in fact been working toward the filing of the City's License Application diligently, persistently, and in the public interest for more than 12 years. And, the Commission has been kept informed of progress during the entire time.<sup>10</sup> At the core of the complexity was the deteriorated condition of many of the Project No. 344 facilities and reasoned differences of opinion on whether the historic agreements required SCE to repair the deteriorated facilities before transferring them to the City.<sup>11</sup> Filing a License Application before the 2010 Agreement was reached with SCE would have greatly diminished the likelihood of reaching a mutually beneficial way forward, could have made the surrender process highly contentious, and would not have been in the public interest. Further delays were caused by the Forest Service's policy change, revealed 13 months after the City applied for a Forest Service permit. The City filed the License Application promptly following the Forest Service's January 15, 2013, policy decision, consistent with Section 4(b) of the 2010 Agreement.<sup>12</sup>

#### Need For Concurrent Consideration

13. The 2010 Agreement Makes Surrender and Licensing Two Parts of a Single Action: The 2010 Agreement was necessary because the 1913 and 1933 agreements did not fully anticipate the regulatory issues (i.e. NEPA compliance, FERC regulatory requirements, State environmental review and divestiture requirements, etc.) relating to SCE terminating its involvement in the project. The City believes the 2010 Agreement inexorably links SCE's Surrender Application and

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<sup>10</sup> For example, SGPWA's letter of January 29, 2003, informs the Commission that the discussions and negotiations with SCE may lead eventually to a License Application: "At this point, SGPWA believes the option that probably best meets the intent of the Federal Power Act and the balancing inherent in the Electric Consumer Protection Act involves working with SCE and the Forest Service to obtain a long-term easement for a reconfigured water-supply-only Project that allows continued full diversion of the historic water rights. Work with SCE to transfer the Project No. 344 assets to the Pass Agency and to surrender the FERC license after the easement has been finalized. However, the evaluation includes consideration of restoring full power generation, and the SGPWA is preserving its option to file an Application for License with the FERC for either full or partial restoration of the power generation capability of Project No. 344."

<sup>11</sup> At that time, SCE was offering the unrepairs facilities for sale to the Participating Entities. After further consideration, fact finding, discussion, and negotiation, SCE agreed to the repairs, to pay 90 percent of the cost of the repairs, and to involve the Participating Entities in the design review and approval for the repairs. The 2010 Agreement was the outcome of these critical negotiations. It was included as an appendix in SCE's Surrender Application. Section 4(a) of the 2010 Agreement preserves the Participating Entities' option to file for a new power license and commits SCE to supporting the City's efforts to obtain a FERC license.

<sup>12</sup> "b. Use Permit, Long-Term Easement, or Power License. Participating Entities shall proceed with due diligence in seeking approval from the FERC, Forest Service, and any other appropriate agency for the right to locate, operate and maintain the Facilities in the repaired/restored condition set forth in the Statement of Work for water supply and, at their option, possibly also for power generation. Participating Entities shall proceed with due diligence to obtain all other approvals related to the operation of the Facilities from federal, state, and local agencies with jurisdiction over the Facilities."

the City's License Application and that they are therefore two parts of a single action and should be considered concurrently.

14. Only Minor Changes Needed to Complete the Record for a Decision on Single, Integrated Action: The City's April 30, 2013, comments on the Commission's DEA discussed the relatively minor amendments that are needed to SCE's Surrender Application and to the DEA to make the record complete and to support Commission decisions on both license surrender and a new power license. The amendments involve leaving equipment in place in the Pine Powerhouse, repairing existing Tank No. 2, and leaving the powerhouse tailrace in place instead of removing it. No new information or analyses are required to assess the effects of these minor actions. Furthermore, there is a public interest to be served in avoiding duplicative evaluation processes that involve the same information and analyses. The community of Banning Heights, which depends entirely on project water, has been particularly affected by the uncertainty associated with surrender and transfer. Furthermore, a number of needed facility repairs have already been deferred more than a decade and it would be helpful to avoid any regulatory processing delays that are unnecessary. There is a public interest to be served in not waiting any longer to begin the review of the City's License Application. The City asks the Commission review the entire chronology of the SCE license surrender and to consider the City's view that there is no substantive conflict between the application filing requirements and concurrent review of the two documents and decisions. As the City reads the DEA, restoring power generation will have no significant environmental effects and will actually avoid some effects identified in the DEA as minor.

15. Plea to Avoid Redundant Reviews of Same Information and Analyses: The City asks the Commission to consider the redundancy and impact on all parties of considering SCE's Surrender Application separately from the City's License Application. There are some minor amendments to the proposed action that are necessary in SCE's Surrender Application owing to the recent Forest Service decision noted above, but SCE and the City crafted a Surrender Application that considers the whole of the action including the continued operation and maintenance of the repaired facilities by the City. The Commission's DEA followed with a review of the environmental effects of the whole of the action that concluded there would be no significant effects. With a few minor edits suggested in the City's comments on the DEA, the record will be complete when the Commission publishes the Final EA. This is why the City, in its License Application, asked the Commission to waive the requirement that a draft license application be circulated for a 90-day review prior to filing. All of the interested parties have reviewed and commented multiple times on the same information and analyses contained in the City's License Application. If the Commission does not consider SCE's Surrender Application and the City's License Application concurrently and, in addition, requires the City's application to be circulated as a draft, the interested parties will be asked to review and comment on the

exact same information and analyses at least four more times. For these reasons, the City also asks the Commission to waive the requirement to circulate a draft of the City's license application for a 90-day review and to consider SCE's Surrender Application and the City's filed License Application concurrently.

16. An Accepted License Application Would Eliminate Uncertainty: Reinstating the City's License Application would address an uncertainty that currently exists about the fate of the Project No. 344 facilities that are to be repaired by SCE. The Commission's DEA assumed the repaired facilities would be transferred to the City and would continue to be operated and maintained as a non-power project under a permit issued by Forest. In April 30, 2013, comments on the DEA, the City informed the Commission of the City's intention to file the License Application and that the DEA should be modified to acknowledge the City intends to continue to operate and maintain the project facilities for both power generation and water supply under a new FERC license. Given the unusual circumstances and history, accepting the License Application would enhance certainty about the future of the Project No. 344 facilities.

17. An Accepted Application Would Enhance NEPA Consistency: Reinstating the City's License Application would help assure the Commission's Final Environmental Assessment (EA) is as robust as possible in terms of NEPA compliance in eliminating uncertainty about the "whole of the action,"<sup>13</sup> that is, what happens after the license is surrendered. The City believes reinstating the City's License Application would enhance NEPA consistency in removing significant uncertainty as to whether the Commission's jurisdiction over the project area may lapse for a period of time. Without addressing this uncertainty, the Commission's EA might need to include consideration of the effects of a lapse in Commission jurisdiction. This, again, is a significant difference between Project No. 344 and Project No. 606, cited in the Order. The NEPA document for Project No. 606 could stand alone without consideration of the competing preliminary permit applications, while the NEPA document for Project No. 344 would be more

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<sup>13</sup> Council on Environmental Quality (CEQ) Guidelines, Sec. 1502.4, requires that proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single NEPA document. Because Forest Service has decided a water only project is incompatible with the Forest Land Management Plan, the City believes the only way the repaired and transferred Project No. 344 facilities could continue to be operated and maintained is if the Commission issues a new license. Accordingly, the City's proposal to operate and maintain the facilities is closely related enough to SCE's proposal to repair and transfer the facilities to the City as to make them a single course of action that should be considered in a single NEPA document. In fact, the Commission's DEA for Project No. 344 license surrender already reflects the reality of this close relationship and contains all of the information and analyses necessary to support a decision on the City's License Application. In commenting on the DEA on April 30, 2013, the City asked the Commission to assure the Final EA recognizes that the City proposes to operate and maintain the repaired and transferred facilities as a water and power project under a FERC license, and the City listed the several minor changes that would be necessary.

robust with the City's License Application reinstated and considered concurrently with the surrender.

#### Requested Actions

18. The City respectfully asks the Commission to: 1) grant the City's request for a rehearing on the Order Dismissing License Application; 2) reinstate the City's License Application to assure for the reasons cited above, including consistency with the 2010 Agreement, enhancing NEPA compliance, and avoiding redundant reviews of complete information and analyses; 3) waive the 90-day draft review requirement for the City's License Application to avoid unnecessary duplication of effort and redundant review cycles; 4) accept the City's License Application for filing; 5) allow 60 days for City and SCE to amend SCE's Surrender Application to eliminate references to Forest Service permitting for a non-power project; 6) revise the Commission's DEA for Project No. 344 to consider the City's plan to operate the repaired and transferred facilities for water supply and power generation under a license from the Commission; and 7) consider the surrender and license applications concurrently to assure consistency with the 2010 Agreement, enhance NEPA compliance, and avoid redundant reviews of complete information and analyses.

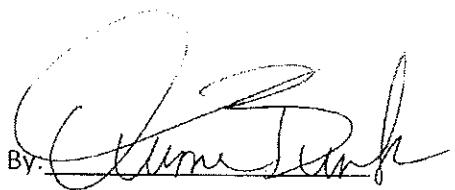
#### Concluding Remarks

19. The City wants to assure the Commission that if the City's License Application is not reinstated the City does in fact intend to resubmit the License Application at the earliest possible moment. To this end, depending on how quickly the Commission responds to this request, the City may decide to circulate the License Application as a draft for a 90-day agency review and not wait for a Commission decision on the requested waiver of this requirement. And, the City may initiate discussions with SCE regarding amending SCE's Surrender Application pending Commission action. That is to say, the City will continue to work diligently and proactively to preserve the City's Project No. 344 assets and avoid the serious public health and safety impacts that would result from losing our water supply.

Thank you for your consideration of our request. Please let me know if you have any questions or require any further clarification at all.

Respectfully submitted,

Duane Burk

By: 

Director of Public Works

City of Banning

Dated: July 1, 2013

## Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Sacramento, California, this 1<sup>st</sup> day of July 2013.



Roy McDonald  
2743 14th Street  
Sacramento, CA 95818

## Service List

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Banning Heights, CA 92220

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General Manager  
San Gorgonio Pass Water Agency  
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Regional Forester's Office  
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Sacramento, CA 95814

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U.S. National Park Service  
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San Francisco, CA 94104-2828

Andrew J. Takata  
City Manager  
City of Banning, California  
PO Box 998  
Banning, CA 92220-0007

Russell W Krieger  
Southern California Edison Company  
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San Dimas, CA 91773-1741

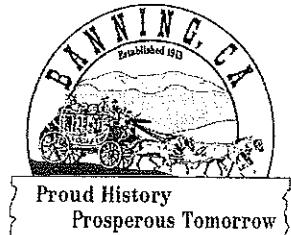
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San Francisco, CA 94104-2828

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Washington, DISTRICT OF COLUMBIA  
20240-0001

FERC Coordinator  
San Bernardino National Forest  
602 S. Tippecanoe Ave.  
San Bernardino, CA 92408

# CITY OF BANNING

## MEMORANDUM



**DATE:** May 30, 2013  
**TO:** Department Directors and Staff  
**FROM:** Michelle M. Green, Deputy Finance Director  
**RE:** Purchasing and Accounts Payable Fiscal Year End Schedule

### Purchase requisitions and purchase orders

FY13 deadlines: If the item(s) you are ordering will be received or services will be performed by June 30<sup>th</sup>, purchase requisitions and purchase orders must be entered by June 24<sup>th</sup>. If, for some reason, you need to enter a FY13 purchase requisition after June 24<sup>th</sup>, please contact the Finance Department for assistance.

FY14 timelines: If the item(s) you are ordering will be received or services will be performed in July 2013 or later they should be entered into FY14.

- FY14 will be available for processing requisitions and purchase orders on July 3, 2013.

### Invoices

FY13 deadlines: All accounts payable invoices that are **required** to be paid out of FY13 must be received and entered for payment no later than August 15, 2013.

**NOTE:** Any invoice for services rendered or for goods received by June 30<sup>th</sup>, 2013 are required to be paid out of FY13. This is an area the auditors look at that frequently results in a negative finding for the City if the invoices are not recorded in the correct fiscal year. Please dig through all desks and folders to find and process all outstanding invoices as soon as possible.

*Please remember....*

When paying your invoices, ***the year in which the invoice is paid is not determined by the invoice date.*** The proper year to pay the invoice is determined by the date services were performed or the date merchandise was received (regardless of which fiscal year the purchase order is in). When an invoice for services covers FY13 and FY14 (i.e. June 12 – July 12) and the amount applicable to each period is easy to determine, the payment must be divided between both years. If it is impossible to break down the amount by dates, the entire amount should be paid in the year that most of the billing period applies to (bill covering 20 days in June and 10 days in July would go to June). If you have any questions regarding the year of payment, again, please do not hesitate to contact us.

### Contracts

In order to have contracts renewed and the related purchase order processed in July, it is important to begin the process now (i.e. Council approval, signatures, insurance received, etc).

*Additional information...*

Instructions on using the HTE system are included with this memo.

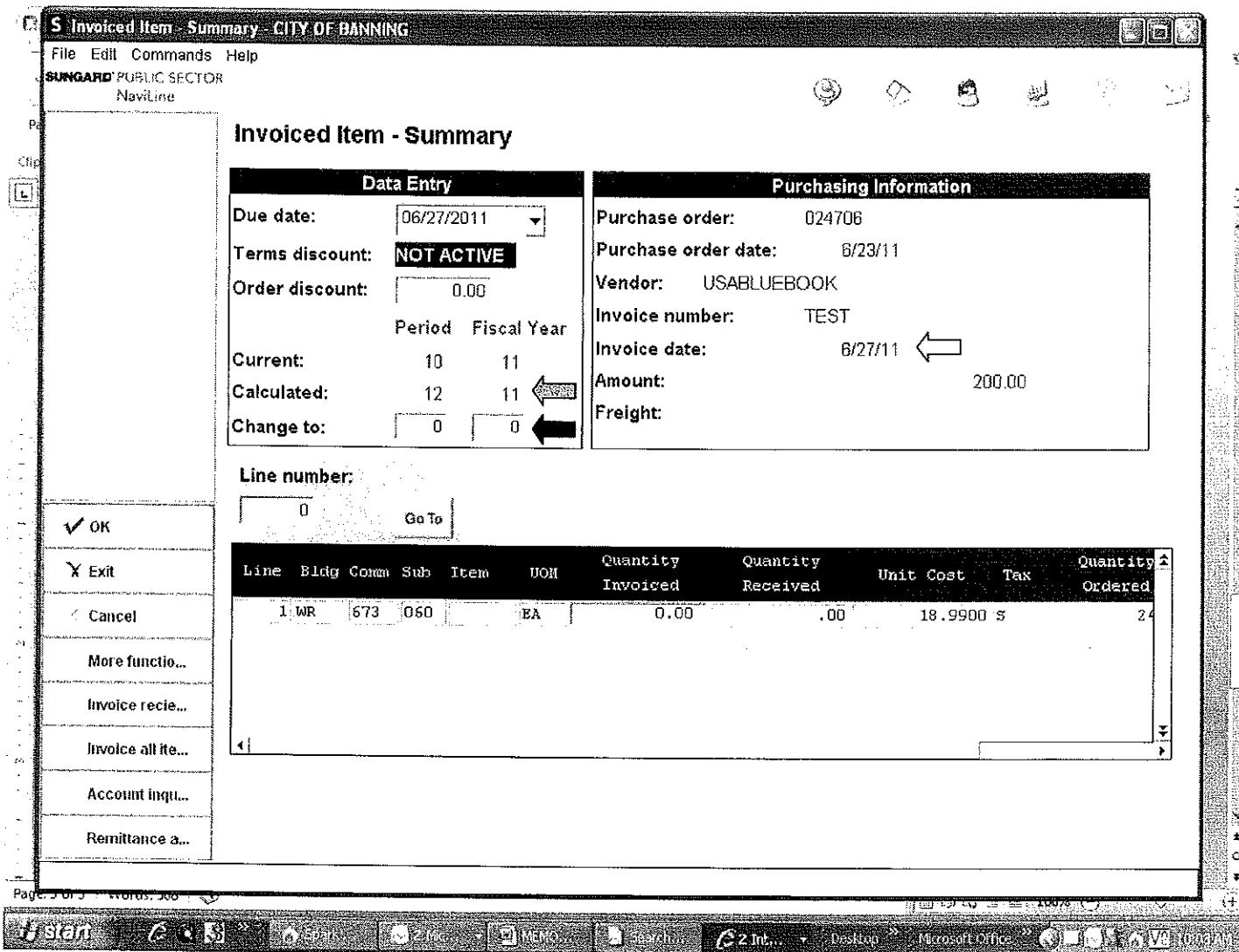
Our Mission as a City is to provide citizens a safe, pleasant and prosperous community in which to live, work and play. We will achieve this in a cost effective, citizen friendly and open manner.

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# HTE instructions

The HTE system defaults according to the invoice date. If you receive an invoice dated after July 1 **that should be paid in FY13** you will need to adjust the period (to 12) and fiscal year (to 13) fields under "Change to" (located in the upper left corner of the Invoiced Item - Summary screen) when receiving that invoice. **See below.** If you have any questions, please give the Finance Department a call and we will be happy to assist you.

## Screen Shot Example



**Invoice Date** - Invoice date keyed in when paying invoice  
**Period** - Default period and fiscal year (based on invoice date)  
- If period and year need to be changed, do so **HERE**

**EXHIBIT F**

**DRAFT APPLICATION FOR 90-DAY REVIEW**

**JULY 9, 2013**



## City of Banning Public Works Department

July 9, 2013

To: Service List and Interested Parties

Re: Draft Application for License – 90-Day Review and Comment Period:

Application for License for a Minor Water Power Project, 5 Megawatts or less, Whitewater Flume 938 kW Water Power Project (former FERC Project No. 344)

The City of Banning (“City”), California, asks for your comments on a draft version of the Application for License the City intends to file with the Federal Energy Regulatory Commission (“FERC or Commission”) to continue to operate and maintain existing water supply and power generating facilities on the South Fork Whitewater and San Gorgonio Rivers in Riverside and San Bernardino Counties, California. An electronic copy of the draft Application for License is provided on a CD enclosed with this letter. Your comments should be addressed to the City of Banning and must be received by 5 pm on October 9, 2013. Comments may be submitted on paper or via email, as follows:

Paper copies:

Duane Burk  
Director of Public Works  
City of Banning  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220-0998

Email copies:

[dburk@ci.banning.ca.us](mailto:dburk@ci.banning.ca.us)  
[lwilliams@ci.banning.ca.us](mailto:lwilliams@ci.banning.ca.us)  
[roycharlesmcdonald@comcast.net](mailto:roycharlesmcdonald@comcast.net)

This project would use facilities that are currently licensed to and operated by the Southern California Edison Company (“SCE”) as the San Gorgonio Nos. 1 and 2 Project (“FERC Project No. 344”). SCE plans to repair damaged project facilities and transfer ownership of the repaired facilities to the City. The transfer is consistent with several historic agreements between the City and SCE, dating back to 1913, and is required for continued water deliveries to communities that have depended on this project water for 100 years. The City will refer to the repaired project as the Whitewater Flume 938 kW Water Power Project.

The City has prepared the enclosed draft Application for License in compliance with 18 CFR, Section 4.61. These are the Commission’s content requirements for an existing project with an installed generating capacity of less than 1,500 kW. The application is organized as follows.

## Initial Statement

Exhibit A - Description of the Project and the Proposed Mode of Operation

Exhibit E – Environmental Report

Exhibit F – General Design Drawings of the Principal Project Works

Exhibit G – Project Maps

### Attachments:

- A. Dr. Richard Harris Riparian Report 2005
- B. Dr. Richard Harris Riparian Report 2010
- C. Thomas Payne & Associates Fishery Reports 2005 and 2010
- D. SCE Wildlife Survey Report 2012
- E. SCE Mountain Yellow-Legged Frog Survey Report 2012
- F. SCE Reptile Survey Addendum 2012
- G. SCE Application for Surrender of License
- H. Agency/Public Comment Letters First Stage Consultation
- I. Comments & Responses SCE Application for Surrender of License
- J. Comments & Responses FERC AIR, SD-1, and SD-2
- K. FERC Environmental Assessment for Project No. 344
- L. Section 401 Water Quality Certification Request

There are several key facts that may help expedite your review of the City's Draft Application for License, as follows:

- The project has been the only source of water to the community of Banning Heights for 100 years and the residents have neither the legal rights nor the infrastructure that would be necessary to secure replacement water.
- The Banning Heights Mutual Water Company, which serves Banning Heights, has primary pre-1914 appropriative water rights for diversions up to 13.26 cfs and the City must continue to operate the project consistent with these rights.
- The City has secondary pre-1914 appropriative water rights for project water not used by Banning Heights and, when available, this water is critically important in recharging the City's groundwater aquifer.
- There are no native fish in the South Fork Whitewater or San Gorgonio Rivers. No non-native (introduced) fish are found in the project reaches of the South Fork Whitewater River. Non-native trout, however, are found in the project reach of the upper San Gorgonio River. These introduced fish are slated by the San Bernardino National Forest for eradication as an SCE license surrender-related action to protect mountain yellow-legged frog habitat.
- Riparian habitat is limited by scour upstream and downstream of the East Fork Dam, but at the South Fork Dam there is functioning riparian habitat both upstream and downstream of the diversion. Groundwater seepage into the channel downstream of South Fork Dam, which likely includes subsurface flow under the dam, is believed to help maintain the riparian habitat. There is riparian habitat upstream of the Black Wheel Creek Dam but none below the dam. The project enhances riparian habitat in a 1.5 mile reach of the San Gorgonio River upstream of the Burnt Canyon Dam.
- The City's proposed operation and maintenance of the project for water supply and power generation was evaluated under the California Environmental Quality Act ("CEQA") by the San Gorgonio Pass

Water Agency. The project was determined to be consistent with one Statutory and three Categorical CEQA Exemptions. Notices of Exemption were filed with and posted by the County Clerks for San Bernardino and Riverside Counties on January 25, 2008. No comments were received on the Notices of Exemption.

- The City's Application for License would be issued after SCE completes the repairs being considered by the Commission in connection with SCE's September 29, 2010, Application for Surrender of License. On July 3, 2013, the Commission circulated an Environmental Assessment ("Final EA") that includes an evaluation of the proposed repairs. It also evaluates the actions proposed in this Application for License, with the following minor differences: 1) Forebay Tank No. 2 would be restored and the access road to the tank would continue to be maintained; and 2) the public benefits would be expanded to include generating power from a renewable energy source. The Final EA concluded there would be no significant environmental effects resulting from the repairs or from continued operation and maintenance by the City. A copy of the Final EA is provided as an attachment to the City's Application for License.

The City apologizes for any confusion or inconvenience caused by this draft review request. The City understands the information and analyses contained in this draft Application for License have already been reviewed and commented upon by Project No. 344 Service List participants (see FERC records for P-344 and P-14520 at [http://elibrary.ferc.gov/idmws/docket\\_search.asp](http://elibrary.ferc.gov/idmws/docket_search.asp)). For this reason, the City asked the Commission waive this 90-day draft application review and comment requirement. However, more than 60 days have passed and the Commission has not yet responded to the City's waiver request. Therefore, prudence requires the City to initiate this 90-day draft review and comment request in order to avoid further potential delays.

We sincerely appreciate your participation.

Sincerely,



Duane Burk  
Director of Public Works  
City of Banning  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220-0998  
(951) 922-3130

Enclosure  
cc: Service List and Interested Parties

## **Certificate of Service**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Sacramento, California, this 9<sup>th</sup> day of July, 2013.



Roy McDonald  
2743 14<sup>th</sup> Street  
Sacramento, CA 95818

### Service List and Interested Parties

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Cultural Heritage Program  
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(Agua Caliente Band of Cahuilla Indians)  
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Regional Director  
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Palm Springs, CA 92262

**INITIAL STATEMENT**

**BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION**

**APPLICATION FOR LICENSE FOR A  
MINOR WATER POWER PROJECT,  
5 MEGAWATTS OR LESS**

**WHITEWATER FLUME 938 kW WATER POWER PROJECT**

**1.0 Introduction**

The City of Banning (“City”), California, hereby applies to the Federal Energy Regulatory Commission (“Commission”) for a new license for the Whitewater Flume Water Power Project, as described hereinafter. This existing water power project is currently licensed by the Commission as FERC Project No. 344, the San Gorgonio Nos. 1 and 2 Hydroelectric Project.

The current Project No. 344 licensee, Southern California Edison Company (“SCE”), has filed an Application for Surrender of License with the Commission to surrender the existing license and decommission components of Project No. 344 that have been damaged beyond repair, including Powerhouse No. 1 (“Big Oaks Powerhouse”). As license surrender-related actions, SCE is also proposing to repair a number of damaged and/or deteriorated project facilities and transfer ownership of these facilities to the City for continued operation and maintenance for both power generation and water supply.

A new license issued by the Commission pursuant to this Application for License will enable the City to operate and maintain the repaired and transferred power generation and water supply facilities for continued public benefit. The community of Banning Heights depends completely on water supplied by the project and has neither the legal access nor infrastructure necessary to access alternative supplies. The project water occasionally not used by Banning Heights is important in recharging the City’s Banning Canyon groundwater aquifer. The electric power generated by the project will serve a growing public need for emission-free renewable energy.

The City asks the Commission to issue a 50 year license in considering: 1) the significant investment that SCE will make to repair the project facilities; 2) these are historic facilities that have been in place and have been operated and maintained for public benefit for nearly 100 years; 3) the project is a critically important community water supply; 4) the project is the only means by which historic pre-1914 appropriative water rights may be exercised; 5) the continued operation and maintenance of the project will have minimal adverse effect on environmental resources; and 6) there is significant public support for the project.

## 2.0 Project Location

The location of the Project is:

State or territory: California  
County: San Bernardino and Riverside Counties  
Nearby Towns: Banning Heights and City of Banning  
Streams: East Fork of the Whitewater River  
South Fork of the Whitewater River  
Burnt Canyon reach of the San Gorgonio River

## 3.0 Applicant Contact Information

Name, address, and telephone number of the Applicant:

City of Banning, California  
Duane Burk  
Director of Public Works  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220-0998  
(951) 922-3130

## 4.0 Authorized Agent Contact Information

Name, mailing address, telephone number, and email address of the person authorized to act as agent for the Applicant in this application:

Dr. Roy McDonald  
2743 14<sup>th</sup> Street  
Sacramento, CA 95818  
(916) 826-9858  
roycharlesmcdonald@comcast.net

## 5.0 Municipal Preference

The Applicant is a municipality but is not claiming preference under section 7(a) of the Federal Power Act.

## 6.0 State Statutory or Regulatory Requirements

The statutory or regulatory requirements of the state(s) in which the project would be located that affect the project as proposed with respect to bed and banks and the appropriation, diversion, and use of water for power purposes, and with respect to the right to engage in the business of

developing, transmitting, and distributing power and in any other business necessary to accomplish the purposes of the license under the Federal Power Act, are described in the following. Also described are the steps which the applicant has taken or plans to take to comply with each of the regulatory cited requirements.

### 6.1 Appropriative Water Rights

The California State Water Resources Control Board (“State Water Board”), Division of Water Rights, regulates the diversion of water for hydroelectric power and water supply. California Water Code Section 1200, et seq.; Title 23 California Code of Regulations Section 650 et seq., permits an application to be filed with the State Water Board to obtain a permit to appropriate water for beneficial uses including power generation and water supply.

No application for a permit to appropriate water is necessary in connection with this Application for License because the City has existing pre-1914 appropriative rights for the project water. The City also has an agreement with Banning Heights Mutual Water Company (“BHMWC”) to operate the project consistent with their existing pre-1914 appropriative water rights.

### 6.2 Clean Water Act Section 401

The City has filed a Request for Section 401 Water Quality Certification with the State Water Board in connection with this Application for License. A copy of the request and proof of receipt are included in Attachment L.

The State Water Board’s Water Quality Certification program is authorized by Clean Water Act Section 401. Certification is required for any activity that requires a federal permit or license and that may result in a discharge to waters of the United States. The Issuance of Certification is based on a determination that State water quality standards will not be violated. Federal regulations define water quality standards as including a State’s water quality objectives, designated beneficial uses, and anti-degradation policy, which requires that “existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected” (40 CFR, Section 131).

Section 13160 of the Porter-Cologne Water Quality Control Act designates the State Water Board as the State’s water pollution control agency for all purposes stated in the Federal Clean Water Act and any other federal act, including issuance of Certification. The State Water Board also considers Section 401 Water Quality Certification to be a discretionary action and therefore requires evidence of compliance with the California Environmental Quality Act (“CEQA”). The City’s CEQA compliance for this Application for License is discussed in the following.

### 6.3 California Environmental Quality Act

CEQA, Title 14 California Code of Regulations section 15000 et seq, is a statute that requires State and local agencies to identify the significant environmental impacts of their discretionary actions and to avoid or mitigate those impacts, if feasible. The San Gorgonio Pass Water Agency (“SGPWA”) carried out the required CEQA review and determined the project to be

consistent with four CEQA Exemptions: CEQA Guidelines Sections 15282(k), 15301, 15302, and 15304. Pursuant to CEQA, Notices of Exemption were filed with and posted by the County Clerks in San Bernardino and Riverside Counties on January 25, 2008. Copies of these Notices of Exemption are included in Attachment L.

#### **6.4 Public Utilities Code**

The City is a public utility that, pursuant to Public Utilities Code, Section 201, et seq, has the right to engage in the business of developing, transmitting, and distributing power and in any other business activity necessary to accomplish the purposes of the license under the Federal Power Act.

#### **7.0 Brief Project Description**

This is an existing hydroelectric and water supply project licensed by the Commission as FERC Project No. 344. It includes four existing dams: East Fork Dam, South Fork Dam, Black Wheel Creek Dam, and Burnt Canyon Dam. The project was originally used solely to supply water to the local communities, but since 1923 has been operated and maintained for power and water supply under long-time agreements between SCE and the City. The agreements include sharing of maintenance costs and a commitment by SCE to supply water to the City and community of Banning Heights, consistent with the City's and BHMWC's individual pre-1914 appropriative water rights for combined year-round diversions of up to 13.26 cfs.

The current Project No. 344 licensee, SCE, filed an Application for Surrender of License with the Commission on September 29, 2010. SCE's application was subsequently accepted for filing and the City filed comments on SCE's application, responses to comments provided by others, and substantive information and analyses in response to the Commission's Scoping Document 1 (SD-1) and SD-2. In addition, the City filed comments on the Commission's April 22, 2013, Draft Environmental Assessment (DEA) for Project No. 344 license surrender.

The license surrender is extremely important to the City. Under the terms of several agreements between the City and SCE, the project facilities referred to in this Application for License are to be repaired by SCE and full ownership is to be transferred to the City.

The Commission is aware that several changes in the configuration of Project No. 344 were made during 1998 to 2005 in response to storm-related damage and the challenges in repairing part of the original conveyance system. SCE's Application for Surrender of License proposes to remove or decommission the storm-damaged and bypassed project facilities, including Powerhouse No. 1 ("Big Oaks Powerhouse"). This Application for License includes the operation and maintenance of the facilities as they are currently configured, but after several damaged and/or deteriorated facilities are repaired by SCE per the Commission's surrender order. The current configuration includes one operable powerhouse, Powerhouse No. 2 ("Pine Powerhouse"), which has an installed capacity of 938 kW, and other facilities, as follows:

- Pine Powerhouse with an installed capacity of approximately 938 kW and associated switchyards and hydroelectric power generating equipment

- Four diversion structures:
  - East Fork Dam on the East Fork Whitewater River
  - South Fork Dam on the South Fork Whitewater River
  - Black Wheel Creek Dam on Black Wheel Creek, a tributary to the South Fork Whitewater River
  - Burnt Canyon Dam on a headwater reach of the San Gorgonio River in Burnt Canyon
- Two sandboxes (East Fork sandbox and South Fork sandbox)
- Three flowlines (Flowline No. 1, Flowline No. 2, and Burnt Canyon Pipeline)
- One 320,000 gallon water tank (Forebay Tank No. 2) used to regulate flows into the Pine Powerhouse.
- One penstock (Penstock No. 2)
- Ancillary facilities (access roads, storage facilities, and fencing)
- Telephone lines and control lines

The project facilities and associated rights-of-way are located on approximately 191 acres of public and private lands. About 83 percent of these lands, 158 acres, are lands of the United States under the jurisdiction of the San Bernardino National Forest (SBNF). About 12 percent of the lands, 24 acres, are owned by the City of Banning. About five percent of the lands, nine acres at Raywood Flat, are privately owned by Mr. Stephen and Mrs. Betty Mascaro (eight acres) and SCE (one acre).

## **EXHIBIT A**

### **DESCRIPTION OF THE PROJECT AND PROPOSED MODE OF OPERATION**

### **APPLICATION FOR LICENSE FOR A MINOR WATER POWER PROJECT, 5 MEGAWATTS OR LESS**

#### **WHITEWATER FLUME 938 kW WATER POWER PROJECT**

#### **1.0 Introduction**

The City proposes to operate and maintain the existing and repaired water diversion, conveyance, and power generation facilities to assure the continued delivery of high quality, gravity-fed water to BHMWC and the City pursuant to their historic, pre-1914 appropriative water rights, and to generate electric power pursuant to the Federal Power Act.

A combined total of up to 13.26 cubic feet per second (cfs) of water will be diverted from three existing run-of-the-river diversion structures located on the East and South Forks of the Whitewater River and on Black Wheel Creek, a tributary to the South Fork of the Whitewater River. These are: 1) East Fork Dam; 2) South Fork Dam; and 3) Black Wheel Creek Dam. These three water diversions are historic structures that, notwithstanding repairs and replacements over the years, have been in operation for more than 90 years.

The water diverted from East and South Forks of the Whitewater River and Black Wheel Creek will then be conveyed approximately 20,750 feet (3.9 miles) to Raywood Flat within Flowline No. 1. The water will then be turned out of Flowline No. 1 into an existing bedrock spillway channel, and spilled downhill into the San Gorgonio River in Burnt Canyon. The water will then flow for about 1.5 miles in a formerly ephemeral headwater reach of the San Gorgonio River, and then be diverted by the Burnt Canyon Dam. Water will then be conveyed via pipeline about one mile where it will be discharged into the head of Flowline No. 2. Project water lost to percolation in Burnt Canyon will be made up via a new well located in the vicinity of the head of Flowline No. 2.

The water will then flow 8,928 feet (1.7 miles) in Flowline No. 2 into a 320,000 gallon water tank, Forebay Tank No. 2. The water will then flow into a 7,000 foot-long (1.3 mile), high pressure steel penstock. The penstock will deliver the project water, under pressure, into the Pine Powerhouse, where the water will be used to generate electric power. After generating power, the water will be discharged into a tailrace and then into the BHMWC water distribution system, which is owned and operated by BHMWC, located outside of the project boundaries, and not a component of the license.

Each facility is described briefly in the following.

## **2.0 Project Facilities**

### **2.1 East Fork Dam**

The East Fork Dam is a rock masonry structure 47 feet long and 14 feet high, located on the East Fork of Whitewater River at an elevation of 7,120 feet above sea level. The river in the vicinity of the East Fork Diversion Dam has been scoured by floodwaters in recent years, and consists of a rocky chute, largely devoid of vegetation and soil. There is no pool upstream of the diversion dam. Water flowing over the dam is diverted vertically via gravity into the top of the diversion dam through a horizontal screen. The diverted water is carried to a sand box and then enters Flowline No. 1. Low to moderate flow is completely diverted into the intake structure; heavier flows are bypassed over the top of the diversion dam.

### **2.2 South Fork Dam**

The South Fork Dam is a concrete structure 18 feet long and six feet high, located on the South Fork of the Whitewater River at an elevation of 7,111 feet above sea level. There is a pool behind the dam that controls the level of the water to facilitate flow into an intake structure. As a surrender-related repair, SCE intends to install break away gates to help limit sand and gravel entrainment into the intake structure during storm events. Flow is diverted by the South Fork Dam into a short segment of concrete-lined canal, through a sandbox, and then into Flowline No. 1.

### **2.3 Black Wheel Creek Dam**

The Black Wheel Creek Dam consists of a concrete-lined canal structure that captures flow from Black Wheel Creek and conveys it into Flowline No. 1, which is located about 50 feet away from the point of diversion. High flows pass over the structure. The dam is located about 0.1 miles from the South Fork Dam, at an elevation of approximately 7,110 feet above sea level. The Black Wheel Creek Dam is currently deteriorated and needs to be repaired. SCE intends to repair the dam as an action related to their license surrender.

### **2.4 Flowline No. 1**

Flowline No. 1 is the pipeline and canal system that conveys water diverted at East Fork Dam, South Fork Dam, and Black Wheel Creek Dam to where the water is turned out into Burnt Canyon. The Flowline No. 1 right-of-way is 200 feet wide and about 20,750 feet or 3.9 miles long from the East Fork Dam to the turnout structure at Raywood Flat. The right-of-way is gently sloping, descending about 130 feet over the 3.9 mile distance, or about 33 feet per mile from an elevation of about 7,180 feet at the East Fork dam and 7,050 feet at the Raywood Flat turnout. Flowline No. 1 was built as a continuous, typically 18 to 30 inches wide and 24 inches deep, rectangular concrete canal within a ten-foot wide developed right-of-way. Over the years both the canal and the developed right-of-way have deteriorated and been damaged by erosion and subsidence. There currently are many places where short sections of pipe were installed by SCE to repair deteriorated and damaged canal structures and where the developed right-of-way

has virtually disappeared due to soil creep and erosion. As license surrender-related actions, SCE will be repairing Flowline No. 1 by replacing the remaining concrete structures with a buried pipeline and restoring deteriorated parts of the developed right-of-way. These repairs will help assure the reliability and safety of Flowline No. 1, will facilitate future inspections, and minimize on-going maintenance requirements.

## 2.5 Burnt Canyon Dam

The Burnt Canyon Dam is located about 5,400 feet above sea level on the Burnt Canyon branch of the San Gorgonio River, about 50 feet upstream from the mouth of Sawmill Canyon. The concrete dam is four feet high and 50 feet wide. There is a 200 square foot concrete-lined pool immediately above the dam that controls the water level and facilitates flow into an intake.

## 2.6 Burnt Canyon Pipeline

The Burnt Canyon Pipeline conveys water diverted by the Burnt Canyon Dam to the headworks of Flowline No. 2, a distance of about 0.9 miles. The pipeline currently consists of a temporary above ground plastic pipeline with cement anchors. As license surrender-related actions, SCE will remove the above ground pipeline and replace it with a permanent, buried steel pipeline.

## 2.7 Burnt Canyon Water Well

As a license surrender-related action, SCE will be constructing a well in the vicinity of the headworks of Flowline No. 2 to recover project water lost to groundwater percolation in the 1.5 mile-long reach upstream of the Burnt Canyon Dam. SCE will install an electric distribution line to power the pump. This well will help assure all the project water turned out from Flowline No. 1 at Raywood Flat reaches Flowline No. 2 and the Pine Powerhouse.

## 2.8 Flowline No. 2

Flowline No. 2 begins adjacent to SCE's Big Oaks Powerhouse (a component of Project 344 planned for decommissioning) and extends 8,928 feet (1.7 miles) along a low-gradient right-of-way to where it discharges into Forebay Tank No. 2 and thereafter into a 7,000 foot-long high pressure steel penstock. Flowline No. 2 consists largely of a rectangular concrete canal 36 inches wide and 24 inches deep, generally covered by boards that help keep debris from entering the canal. There is one section of the canal, about 100 feet long, that was replaced by SCE with bolted segments of sheet steel. The flowline begins at an elevation of about 5,250 feet above sea level and ends at about 5,200 feet, having descended about 50 feet in elevation over 1.7 miles, or about 29 feet per mile. The level, developed (cleared, graded, and built) portion of the right-of-way, where the canal is located, is generally about ten feet wide, with the remainder of the 200 foot right-of-way comprising the slopes above and below the canal. There are several places along Flowline No. 2 that will be repaired by SCE as license surrender-related actions.

## 2.9 Forebay Tank No. 2

Forebay Tank No. 2 is located about 5,170 feet above sea level, about 900 feet higher than the Pine Powerhouse, and is used to regulate the flow of project water into the powerhouse to maximize electricity production, and at times facilitate peaking. Tank No. 2 receives water from Flowline No. 2 and has a capacity of 320,000 gallons. The tank has experienced deterioration and will need to be repaired before it is returned to service.

## 2.10 Pine Powerhouse

Project water is conveyed into the Pine Powerhouse via a 7,000 foot-long steel penstock. The Pine Powerhouse is a 32-foot by 22-foot steel-reinforced concrete structure that houses a single generator with an installed capacity of 938 kW and a horizontal-shaft impulse turbine rated at 1,030 horsepower. Adjacent to the powerhouse is a switchyard, which sits on a 25 foot by 36 foot concrete slab and contains three step-up transformers with voltages of 2.4 kV to 33 kV, along with dead end racks and an instrumentation transformer. The elevation of the powerhouse is about 4,320 feet above sea level. The powerhouse tailrace is approximately 180 feet long, with two 12-inch diameter metal pipes that lead to the San Gorgonio River. There is a second pipe that leads from the powerhouse tailrace to a water tank owned and operated by BHMWC. This second pipe and the BHMWC water tank are not Project No. 344 facilities and are not included in this Application for License.

The project will produce an average of about 900,000 kilowatt-hours of electricity each year. The maximum flow through the powerhouse will be 13.26 cfs. The plant will be operated semi-automatically, with peaking capacity provided by 320,000 gallons of water storage above the Pine Powerhouse in Tank No. 2. Apart from this water tank, the project has no reservoir or storage capacity. The revenue from electricity sales will be used to partially offset the operation and maintenance costs for both power generation and water supply.

The Pine Powerhouse is currently in a stand-by mode pending the surrender of the license for Project No. 344 and the issuance of a new license to the City. Once the license is issued, the needle valve and related equipment will need to be reinstalled and the transformers will need to be reconditioned and refilled. The City estimates \$300,000 may be required to address these issues and to generally restore the powerhouse to an operating condition after a relatively long stand-by period. The incremental operation and maintenance costs related to the power generation component of the project are estimated to be about \$70,000 per year.

## 3.0 Proposed Actions

The City proposes to continue to operate and maintain the project for water supply and power generation. The operation of the project is defined by the existing physical constraints. All four of the project diversion dams are run-of-the-river facilities that have no water storage capacity. The operation of the project diversions will therefore continue to be determined by weather-related instream flow conditions. The Pine Powerhouse will be operated manually and/or remotely to maximize electric generation when project water is available in sufficient quantities for generation.

As a license surrender-related action, SCE intends to install break-away gates at South Fork Dam that will collapse and thereby facilitate the movement of water and sediment through the dam and safely downstream during storm events. The gates will need to be reset after storm events by one or two crew members. Depending upon the season, the crew will access the dam via Forest Service Road 2S01 using either a light duty pickup truck or using snowmobiles or a snow cat. Hand tools and light duty equipment will be used to remove any sand and gravel that has accumulated in the intake facilities and sandbox and cannot be returned to the stream via sluicing. Sand and gravel removed by the crew will be spread on the developed parts of the adjacent right-of-way and staging areas.

The East Fork Dam, South Fork Dam, and Black Wheel Creek Dam will be regularly inspected by one or two crew members using a light duty pickup truck via Forest Service Road 2S01. During late fall through late spring, one or two snowmobiles or a snow cat will be used as necessary to conduct these inspections. The purpose of the inspections will be to identify repair or maintenance needs. The necessary repairs or maintenance might be performed at the time of the inspections or they might be scheduled as future actions, depending upon the identified problem and the materials and equipment requirements.

The East Fork Dam and South Fork Dam are located on stream reaches that typically carry high, sediment-laden flows during storm events. Both dams include trash racks, intake facilities, and sand boxes that are designed for the site conditions and act to limit the entrainment of debris and sediment into Flowline No. 1. Sediment entrainment is the primary maintenance issue for these dams. The intakes, pipes, and sandboxes can become blocked by sand and gravel during high flow events. The facilities are designed to return sediments to the streams via sluicing. Any sand and gravel that must be removed by hand will be spread on the developed parts of the adjacent right-of-way and staging areas by a small number of maintenance workers using hand tools. The high flow events can also cause damage to the trash racks that are in place to prevent large debris, including coarse gravel, from entering the intakes and clogging the pipes and sandboxes. Replacing the trash racks involves work by a small number of maintenance crew members using light duty pickup trucks and small-scale repair equipment and materials that can be transported to the sites in these pickup trucks.

The Black Wheel Creek Dam is a simple, rectangular concrete box structure without a trash rack, intake structure, or sandbox. There currently is a rectangular concrete canal that conveys the diverted water about 50 feet into Flowline No. 1. The design of the dam is such that high flows pass over top of the dam structure. Maintaining the dam involves periodically removing sand and gravel washed into the structure and into the adjacent canal during storms. The sand and gravel will be removed from these facilities by a one or two person crew using hand tools and light duty equipment. They will spread the sand and gravel on developed parts of the right-of-way and adjacent staging area. The crew will access the site via Forest Service Road 2S01 and a short unimproved access road using a light-duty pickup truck, snowmobiles, or a snow cat, depending upon the season. SCE intends to repair this dam, which is deteriorated, as a license surrender-related action.

Flowline No. 1 will be repaired by SCE as a license surrender-related action. SCE will replace the current Flowline No. 1 concrete box canal structures with a buried pipeline and will restore the ten-foot wide developed right-of-way to facilitate access and to assure the safety of the City's employees when performing inspections or maintenance. The buried pipeline will minimize future inspection- and maintenance-related activity along Flowline No. 1. Monthly or bimonthly inspections will be accomplished by two crew members driving all-terrain-vehicles (ATV) on the developed 3.9 mile right-of-way from East Fork Dam to the turn-out at Raywood Flat. The ATVs will carry hand tools to accomplish light maintenance during the inspection. This is expected to include removing sand from several outlet locations along the pipeline and spreading the sand on the developed right-of-way. It is also expected the crew may have to remove fallen trees and branches from the right-of-way using one or two chainsaws. The resulting cuttings will be side cast. The crew will use two light duty pickup trucks to transport the ATVs to East Fork Dam, first leaving one of the pickup trucks at Raywood Flat. This way the ATVs will pass once along the Flowline No. 1 right-of-way and can be left at Raywood Flat while the crew uses one pickup truck to retrieve the second pickup truck from East Fork Dam.

The Burnt Canyon Dam will be inspected biweekly or monthly and maintained on an as-needed basis by a one or two person crew using a light duty pickup truck and accessing the dam site via an unimproved side road from Forest Service Road 2S01. The routine maintenance will involve cleaning debris such as tree branches off the trash rack and removing sand and gravel from the pool and intake facility via sluicing or by hand. Hand tools and light duty equipment will be transported to the site using the light duty pickup truck and will be used to perform the maintenance. The debris will be side cast and any sand and gravel removed by hand will be spread on the unimproved road and staging area immediately adjacent to the dam.

The Burnt Canyon Pipeline is to be buried by SCE in an unimproved access road as a license surrender-related action. Inspections of this pipeline route will be conducted biweekly or monthly by the same two person crew that inspects the Burnt Canyon Dam. The buried pipeline is expected to require virtually no regular maintenance.

The 1.7 mile-long Flowline No. 2 will be inspected monthly or bimonthly on foot by a crew of one or two persons carrying hand tools. The crew will be picked up and dropped off at each end by a light-duty pickup truck via Forest Road 2S01. The rectangular concrete canal will need to be periodically cleared of sand and gravel and debris that has either been entrained by project water or that has entered the canal from soil creep, slope wash during rainstorms or snowmelt, or from other kinds of debris falls from adjacent slopes. Clearing the canal requires the removal and replacement of the wood covering boards, the removal of sand and gravel using hand tools, side casting vegetative debris and spreading sand and gravel on the adjacent, developed right-of-way. SCE will repair several deteriorated or damaged sections of Flowline No. 2. These repairs include replacing a large number of missing or damaged cover boards, making improvements in the way several debris chutes cross the canal, and restoring several eroded sections of the developed right-of-way to assure the safety of the City employees who will be inspecting and maintaining the flowline. Forebay Tank No. 2 will need to be restored to service and then inspected along with Flowline No. 2. The water well to be constructed by SCE near the Flowline No. 2 headworks will also be inspected by the same crew and at the same times as Flowline No. 2.

The City will cooperate with the Forest Service in maintaining the existing, unimproved access roads that are necessary for continued project access. Grading and otherwise repairing the unimproved access roads is a typical post-winter activity, requiring the use of a light-duty grader or bulldozer and one to several crew members, and taking up to two to three days to complete. The removal of fallen trees will sometimes be required, and this will be done by a crew of two to three persons using chainsaws. The cut wood will be side cast in the immediate vicinity of the tree falls.

The Pine Powerhouse will be operated, inspected, and maintained by a crew of one or two persons gaining access to the site by one or two light duty pickup trucks via Forest Service Road 2S01. The maintenance activities relate to assuring the performance of mechanical and electrical equipment contained in the powerhouse structure and in the transformer and switchyards in the immediate vicinity of the powerhouse. Maintenance will involve periodic delivery of equipment, materials, and supplies and the pickup of damaged or worn equipment or parts and of waste materials and trash. Lubricants, cleaning fluids, and small amounts of diesel and/or gasoline will be used on site and stored in approved containers in the powerhouse structure. Heavy duty vehicles and heavy equipment such as cranes, along with small crews of several workers, may occasionally be required.

#### 4.0 Project Drawings and Maps

This Application for License includes project drawings and maps, as follows.

Exhibit F consists of several general design drawings of the principal project works described above. These drawings are preliminary pending the repairs that will be completed by SCE as license surrender-related actions. These are existing facilities and general design drawings of these facilities are currently on file with the Commission under Project No. 344. Final drawings will be provided as and when needed by the Commission per 18 CFR Sections 4.39 and 4.61.

Exhibit G contains maps that show the general locations of the project facilities described above, including the proximity of the facilities to the community of Banning Heights and to the City's groundwater recharge and water well field. The project boundaries will be 100 feet on either side of the conveyance facilities, which include Flowline No. 1, the Burnt Canyon Pipeline, and Flowline No. 2, and 100 feet on all sides of the diversion dams, Forebay Tank No. 2, and the Pine Powerhouse and associated ancillary facilities. Existing structures on private lands along Flowline No. 1 in the vicinity of Raywood Flat would be specifically excluded from the project boundaries. Final detailed project maps will be provided as and when needed by the Commission per 18 CFR Sections 4.39 and 4.61.

## EXHIBIT E

### ENVIRONMENTAL REPORT

#### APPLICATION FOR LICENSE FOR A MINOR WATER POWER PROJECT, 5 MEGAWATTS OR LESS

#### WHITEWATER FLUME 938 kW WATER POWER PROJECT

### 1.0 Introduction

The following Exhibit E Environmental Report is organized to comply with the Commission's content requirements for a minor water power project with existing dams and an installed capacity of less than 1.5 MW. According to 18 CFR, Section 4.61, Contents of Applications, this environmental report must contain the following:

- *"A description... of the environmental setting of the project, including vegetative cover, fish and wildlife resources, water quality and quantity, land and water uses, recreational uses, historical and archeological resources, and scenic and aesthetic resources."*
- *"A description of the expected environmental impacts... and an explanation of the specific measures proposed by the applicant, the agencies, and others to protect and enhance environmental resources and values and to mitigate adverse impacts of the project on such resources..."*
- *"A description of the steps taken by the applicant in consulting with Federal, state, and local agencies with expertise in environmental matters during the preparation of this exhibit prior to filing the application for license with the Commission."*
- *"Any additional information the applicant considers important."*

These Section 4.61 content requirements are addressed in the following.

### 2.0 Existing Setting and Project-Related Impacts

This description of the existing environmental conditions and project-related impacts is provided per Section 4.61 in the following seven subsections:

- 2.1 Vegetative Cover
- 2.2 Fish and Wildlife Resources
- 2.3 Water Quality and Quantity
- 2.4 Land and Water Uses
- 2.5 Recreational Uses

2.6 Historical and Archeological Resources  
2.7 Scenic and Aesthetic Resources

## 2.1 Vegetative Cover

### 2.1.1 Existing Setting

Vegetative cover in the San Bernardino Mountains generally varies with elevation. The East Fork Dam, South Fork Dam, Black Wheel Dam, and Flowline No. 1 are all located above 7,000 feet of elevation, where temperatures are relatively cool and precipitation averages a relatively high 40 inches per year. The non-riparian plant communities in these locations consist primarily of mixed conifer-pine forest with intermittent areas of oak-dominated forest. An understory of chaparral is typical where the forest canopy is open. Riparian plant communities occur in project streams and along the several perennial and intermittent tributary streams that flow across Flowline No. 1. The riparian communities typically include white alder with an over-story of mixed conifers, an understory shrub layer of golden currant, and an herbaceous ground cover of stinging nettle and sedges.

The stream channel where the East Fork Dam is located is deeply scoured and appears to be particularly prone to extreme flow events. In 2005, the City's consultants observed the channel upstream and downstream of the East Fork Dam to be deeply scoured, comprised mainly of sand and gravel, and devoid of riparian resources (Attachment A). In 2010 there was a scattering of emergent riparian plants upstream and downstream of the dam, along with a house-sized boulder newly moved into the stream channel just above the dam (Attachment B). The extreme flow events appear to be related to the asymmetrical geometry of the drainage area, one side of which is comprised of the south-west face of San Gorgonio Mountain, which rises 3,000 feet above the stream channel. This mountain face is steep, thinly vegetated, and appears to generate significant amounts of runoff.

The stream channel where the South Fork Dam is located appears more to be less affected by extreme flow events than the East Fork and a relatively stable, functioning riparian habitat occurs both upstream and downstream of the dam. The City's consultants noted that some scouring and deposition had occurred in the South Fork between the two field investigations in 2005 and 2010 (Attachments A, B, and C), but in general the South Fork catchment area is flatter than that of the North Fork and appears less prone to deeply scouring flows.

Black Wheel Creek is a small, incised tributary to the South Fork that appears to be perennial or intermittent, depending on the water year. The stream channel above the diversion dam contains riparian habitat consisting of rushes, sedges and horsetail along with a scattering of alder and oak trees. There is no riparian vegetation in the channel downstream of the dam, apparently as the result of many years of project-related water diversion.

The Burnt Canyon Dam and pipeline, Flowline No. 2, and the Pine Powerhouse are located in the middle to lower elevations, below 5,400 feet and above 4,200 feet above sea level, where conditions are warmer and dryer, with precipitation averaging about ten inches per year. The dam and pipeline are located on the valley floor in coastal sage scrub, chaparral, and oak

woodland. A State-designated sensitive plant community, Riversidean alluvial fan sage scrub, occurs in the San Gorgonio River channel downstream of the Burnt Canyon Dam and along the Burnt Canyon Pipeline right-of-way.

The Burnt Canyon Dam is located where a change occurs in the valley and stream morphology and the conditions for riparian habitat. Upstream of the dam, the stream is confined in a narrow canyon while downstream of the dam the canyon opens up and becomes a broad, sparsely vegetated, irregular topography of coarse gravel. Alder dominates the riparian vegetation in the canyon upstream of the dam. Associated plant species there include willow, coffeeberry, red-flowering currant, mulefat and sedges. Big cone Douglas-fir, coulter pine and oaks are present on the canyon slopes. Riparian vegetation is absent immediately below the dam and for several hundred yards, and was absent when the dam was constructed in 2005.

Flowline No. 2 and the penstock are located on north-facing valley side slopes that are covered by scrub oak forest. The Pine Powerhouse is located on the valley floor where coastal sage scrub, chaparral, and oak woodland are common.

A substantial amount of background information on vegetative cover in the general project area and region is available in SCE's September 29, 2010, Application for Surrender of License (Attachment G) and in the Commission's July 3, 2013, Environmental Assessment for license surrender (Attachment K). The information in these two documents was considered in preparing this Application for License.

### 2.1.2 Project-Related Impacts

#### 2.1.2.1 Impact Summary

This Application for License proposes to operate and maintain the facilities necessary to generate power in the Pine Powerhouse, as repaired by SCE, and to continue to deliver water to nearby communities, consistent with existing pre-1914 appropriative water rights. No changes to the facilities are proposed and no land-disturbing activities outside of the developed rights-of-ways are proposed. Therefore there will be no changes to the existing environment and no impacts upon vegetative cover associated with this Application for License.

While there will be no change to the existing environmental conditions, the City has considered ways in which the project might be able to enhance the existing vegetative cover, as follows.

#### 2.1.2.2 Burnt Canyon Riparian Habitat

The City will continue to operate the project to support and enhance riparian habitat along a 1.5 mile reach of the upper San Gorgonio River in Burnt Canyon. This reach has received project water since 1998 and now supports a substantial and growing riparian cover. City consultants estimate that riparian cover has doubled due to the project flows and is now about 80 percent. The City will assure the continued operation and maintenance of the project takes into account the dependency of these resources on the project flows turned out from Flowline No. 1. This includes scheduling diversion dam and flowline maintenance to avoid curtailing flows during the

fall growing season and restoring project flows promptly following all scheduled or unscheduled outages.

#### 2.1.2.3 East Fork, South Fork, and Black Wheel Creek Riparian Habitat

Pre-existing water rights, impacts on communities, and impacts on riparian habitat enhancement in Burnt Canyon are important constraints the City faces in considering minimum flow releases at the East Fork, South Fork, and Black Wheel Creek Dams. First, the City must operate the project diversion dams consistent with existing water rights, specifically BHMWC's pre-1914 appropriative water right for a combined total diversion of 13.26 cfs. These diversion structures and flowlines are collectively sized to convey the required amount of water. Flows in excess of 13.26 cfs are not diverted and continue downstream. Second, beyond water rights violations, reducing water supply to the community of Banning Heights has the potential to adversely affect public health and safety, cause economic hardship, and cause the dislocation of existing populations. Banning Heights has neither the legal rights nor infrastructure needed to access alternative sources of water. And, third, minimum flow releases at East Fork, South Fork, and Black Wheel Creek Dams would take water away from riparian and aquatic habitat enhancement in a 1.5 mile Burnt Canyon reach of the San Gorgonio River.

A further consideration is the limited resource benefits that minimum flow releases would have below the three dams. First, the stream channel above and below the East Fork Dam is a highly scoured gravel chute that is devoid of mature riparian habitat. Emergent riparian plants appear to come and go depending upon the frequency of scouring flows. Any enhancement below the dam would be short-lived and of limited benefit.

The situation at the South Fork Dam is different and riparian habitat occurs along the stream channel both above and below the South Fork Dam, but here there is evidence that the diversions are not significantly limiting the resources. There are some differences in ecological functioning above and below the dam that appear to be related to the geomorphology of the stream, the upstream reach being steeper and more confined than the downstream reach. However, neither the upstream or downstream reach is significantly impaired or functioning at a level superior to the other (Attachments A and B). Groundwater seepage into the channel, confirmed by field observation, appears to help support riparian habitat below the dam. The evidence includes damp areas in the stream banks and the occurrence of springs that arise spontaneously in the channel. Some of this groundwater seepage may represent subsurface flow beneath South Fork Dam, which is generally referred to as "leakage" but is the result of the design of the dam and absence of structures that intercept or inhibit subsurface flow. The seepage immediately below the dam has been measured at 0.32 cfs and this flow may be a factor in supporting the riparian habitat. The City believes this amount of seepage is inevitable considering the design of the dam and can be maintained without violating BHMWC's pre-1914 appropriative water right. If the Commission agrees this seepage is beneficial, the City could agree that eventual reconstruction or replacement of the South Fork Dam would not include structures specifically designed to intercept or inhibit subsurface flow.

The City consultant described the riparian habitat upstream of the Black Wheel Creek Dam as relatively limited in terms of resource values (Attachment B) because of the small area and small

size of the stream. The project-related diversions appear to explain the absence of riparian habitat downstream of the dam, in spite of the reach being periodically watered during high flow events passing over the dam. Minimum flow releases could result in a minor increase in habitat.

#### 2.1.2.4 Agency Recommended Environmental Measures

In a letter to the Commission dated July 12, 2011, the SBNF recommended that SCE develop an invasive weed control plan as a license surrender-related action. This plan is to include Forest lands that are located within the project area described in this Application for License. The City proposes to work with the SBNF during the term of the license to assure the continued operation and maintenance activities associated with this Application for License are consistent with and help achieve the objectives of this plan.

## 2.2 Fish and Wildlife Resources

### 2.2.1 Existing Setting

Native fish do not occur and have never occurred in the project streams upstream or immediately downstream of the four diversion dams. This appears to be due to a combination of factors, including extreme winter conditions in the higher elevations of the San Bernardino Mountains, periodic flash flooding events and resulting stream channel scouring, the warm, dry climatic conditions during late summer and early fall that are typical of southern California's Mediterranean climate, and most importantly that the project streams drain into an evaporative inland lake (Salton Sea) that does not have an endemic fish fauna.

Non-native rainbow trout were recorded in the 1990's in the South Fork, immediately upstream and downstream of the South Fork Dam by State Department of Fish and Wildlife biologists. Aquatic resources studies carried out in 2005 by City consultants found habitat conditions in the vicinity of South Fork Dam to be suitable for rainbow trout (Attachment C). The water was turbulent during these 2005 studies and the presence or absence of fish could not be confirmed. Electrofishing carried out by City consultants in 2010 detected no rainbow trout in the South Fork either above or below the dam.

SCE personnel have reported seeing the non-native rainbow trout in Flowline No. 1 between the South Fork Dam and the flowline turn-out at Raywood Flat. SBNF and U.S. Geological Survey ("USGS") personnel reported seeing non-native rainbow trout in large numbers and up to 14 inches in length in the headwater reach of the San Gorgonio River above the Burnt Canyon Dam during September and October 2012. This 1.5 mile reach was formerly ephemeral, but has become intermittent or perennial due to augmentation by project water.

Wildlife is abundant in the project area. The area is remote, public access is limited, and habitats are largely undisturbed. Commonly observed species include:

- Acorn woodpecker
- Western scrub-jay
- Dark-eyed junco

- Mountain chickadee
- Northern flicker
- Spotted towhee
- Southern sagebrush lizard
- Western fence lizard
- Common side-blotched lizard
- Mule deer
- Bobcat
- Black bear

Three species designated by the San Bernardino National Forest as Management Indicator Species were observed to occur in the project area, as follows:

- Song sparrow – riparian areas
- Mule deer – riparian areas, Flowline No. 1 and FS Road 2S01
- Mountain lion – Burnt Canyon Dam and access road

These species are monitored by the San Bernardino National Forest because changes in their populations are believed to reflect Forest management activities.

Several sensitive wildlife species were determined to occur in the project area. These are one reptile, seven bird, and two mammal species, as follows:

- Coastal rosy boa
- American peregrine falcon
- Southwestern willow flycatcher
- Golden eagle
- California spotted owl
- Loggerhead shrike
- Yellow warbler
- Yellow-breasted chat
- Mountain lion
- Nelson's big-horn sheep

Four listed wildlife species have either been observed in the project area or may occur there because the appropriate habitat is present, as follows:

- Two-striped garter snake
- Southern Rubber Boa
- American Peregrine Falcon
- Southwestern Willow Flycatcher

A substantial amount of additional information on wildlife and suitable habitat in the project area and general project region was developed in connection with SCE's Application for Surrender of License. This information includes individual wildlife survey reports (Attachments D, E, and F) and the wildlife and habitat sections of SCE's Application for Surrender of License (Attachment

G) and of the Commission's July 3, 2013, Environmental Assessment for license surrender (Attachment K). The information in these several documents was considered in preparing this Application for License.

### 2.2.3 Project-Related Impacts

#### 2.2.3.1 Impact Summary

This Application for License proposes to operate and maintain the facilities necessary to generate power in the Pine Powerhouse, as repaired by SCE, and to continue to deliver water to nearby communities, consistent with existing pre-1914 appropriative water rights. No changes to the facilities are proposed and no land-disturbing activities outside of the developed rights-of-ways are proposed. Therefore there will be no changes to the existing environment and no impacts upon fish or wildlife resources associated with this Application for License.

While there will be no change to the existing environmental conditions, the City has considered ways in which the project might be able to enhance the existing fish and wildlife resources, as follows.

#### 2.2.3.2 Burnt Canyon Fish and Wildlife Habitat

The project currently enhances riparian habitat along a 1.5 mile reach of the upper San Gorgonio River in Burnt Canyon. This reach has received project water since 1998 and now supports a substantial and growing riparian cover. In fact, City consultants estimated that riparian cover has doubled due to the project flows and is now about 80 percent (Attachment B). The City will continue to operate the project to support and enhance riparian habitat. And, the City will assure that the operation and maintenance of the project will take into account the dependency of these resources on the project flows turned out from Flowline No. 1. This includes scheduling diversion dam and flowline maintenance to avoid outages during the fall riparian plant growing season and restoring flows to the stream promptly following all scheduled or unscheduled outages.

SBNF and USGS personnel confirmed this reach of the upper San Gorgonio River now supports a large population of non-native rainbow trout. In a July 12, 2011, letter to the Commission, the SBNF outlined plans to work with SCE to eradicate trout in this reach as a surrender-related mitigation measure. The reach contains mountain yellow-legged frog habitat and the presence of trout is a significant limiting factor for this sensitive species.

#### 2.2.3.3 East Fork, South Fork, and Black Wheel Creek Wildlife Habitat

No native or non-native fish are found in the South Fork Whitewater River diverted reaches and therefore opportunities for enhancement of existing fish resources do not exist. The potential for the project to enhance wildlife resources by creating new riparian habitat in these three stream reaches is discussed elsewhere in this Exhibit E under Vegetative Cover.

#### 2.2.3.4 Agency Recommended Environmental Measures

The SBNF made a number of recommendations for environmental protection and enhancement in their letter of July 12, 2011, related to SCE's Application for Surrender of License, several of which are specific to the City's continued operation and maintenance of project facilities for water supply and power generation, as follows:

1. *"In-stream flows are required downstream of each of the diversions as per the Forest Plan. Engineering designs for changed diversions will be reviewed by qualified Forest Service staff. Implementation will be monitored by qualified Forest Service staff."*
2. *"Road maintenance activities that occur at water crossings within suitable mountain yellow-legged frog habitat will be surveyed (for tadpoles, egg masses, metamorphs, and adults) by a qualified biologist no more than one day prior to maintenance activities."*
3. *"Vegetation removal will be limited to the greatest extent possible while still providing for necessary maintenance activities. The objectives are to not compromise the integrity of the riparian habitat, maintain cover of the aquatic system, and to limit erosion impacts to the aquatic habitat."*
4. *"Nighttime work will be avoided during this project. Nighttime is defined as the period between sunset and sunrise."*
5. *"Pets of project personnel and employees shall not be allowed on the project work areas."*
6. *"All data resulting from surveys conducted by and for the proponents will be made available to the Forest Service."*
7. *"Vegetation removal including brushing, felling and/or removal of hazard trees during road maintenance within 500' of known threatened and endangered species habitat will be avoided during the appropriate species' breeding period."*
8. *"Directional felling of hazard trees, where necessary to protect safety, will be done to avoid impacts to riparian vegetation. Where it is not feasible to avoid impacts to the riparian vegetation and not possible to wait until after breeding due to an imminent threat, a qualified biologist will monitor the work, conduct searches for nests, eggs, tadpoles, etc., and work with the fallers to avoid direct impacts."*

The City cannot agree to implement SBNF recommendation #1 for additional instream flow releases at the East Fork Dam, South Fork Dam, and Black Wheel Creek Dam because such releases would violate BHMWC's pre-1914 appropriative water right. The City is willing to implement SBNF recommendations #2 through #8 during the term of the license.

## 2.3 Water Quality and Quantity

### 2.3.1 Existing Setting

The project depends on runoff from rainfall and snowmelt from three small watersheds that extend from an elevation of about 7,100 feet above sea level at the East Fork, South Fork, and Black Wheel Creek Dams up to about 11,500 feet at the crest of San Gorgonio Mountain. The drainage area above the East Fork Dam is 1.6 square miles and the drainage area above the South Fork Dam is 2.4 square miles. The drainage area above Black Wheel Creek Dam is 0.4 square miles, for a total project watershed area of 4.4 square miles. All three watersheds drain into the South Fork Whitewater River, which later becomes the Whitewater River at its confluence with the San Gorgonio River. The three project watersheds are remote, difficult to access, and undeveloped. None of these three run-of-the-river dams has water storage capacity. There are no sources of wastewater in the project area and the project itself does not discharge treated or untreated waste water.

The water that is diverted by the East Fork, South Fork, and Black Wheel Creek dams is turned out of Flowline No. 1 into Burnt Canyon, which is a headwater reach of the San Gorgonio River. The project water flows in the San Gorgonio River for about 1.5 miles and then is diverted again by the Burnt Canyon Dam, a run-of-the-river dam that has no storage capacity. This reach was naturally ephemeral, but has become perennial with the introduction of the project water. This part of the San Gorgonio River is within the Banning Water Canyon, a watershed area that is owned and maintained by the City for groundwater recharge and the operation of City-owned water supply wells. The Banning Water Canyon is undeveloped and public access is restricted.

The San Gorgonio River later joins the other project stream, the South Fork Whitewater River, and becomes the Whitewater River. The Whitewater River eventually discharges into the Salton Sea, an evaporative inland lake that lies 226 feet below sea level.

The quality of the water in the project reaches is excellent owing to the undeveloped nature of the project watershed, and minimal water treatment is required for its use as potable drinking water in the community of Banning Heights. The high quality of the water is confirmed by over forty years of field and laboratory testing by the United States Geological Survey ("USGS") of water samples collected at USGS Station 10256000, Whitewater River near White Water, 12.5 miles downstream of the project diversions at an elevation of 1,610 feet above sea level. Three key parameters, dissolved oxygen, water temperature, and pH were included in the USGS testing and are briefly summarized in the following.

The measured dissolved oxygen levels were high ranging from 7.2 milligrams per liter (mg/L) (89 percent of saturation) to 10.9 mg/L (117 percent of saturation) out of 52 samples. Generally, oxygen saturation levels were above 90 percent for most measurements and are consistent with an upper mountain watershed with high slope and ample opportunity for oxygen entrainment. The mean dissolved oxygen value during the period was 8.95 mg/L. Generally, the highest levels were recorded during winter months when water temperature is lower and oxygen saturation

point is higher and low during the summer-fall months when water temperature is typically higher and the oxygen saturation point is lower.

Water temperature ranged from 8.9 degree Celsius (°C) to 29 °C based on 80 measurements taken at USGS Station 10256000. The lowest levels were generally recorded during the winter-spring time period and the highest levels recorded during the summer-fall period. The mean water temperature as measured during sampling events was 17.34 °C. Water temperatures at the project diversions are expected to be considerably lower because the diversions are located about 7,100 feet above sea level and this USGS water temperature record is for a location 1,610 feet above sea level. Water temperature at South Fork Dam was reported by City consultants to be approximately 12 °C on October 4, 2010.

The pH of the Whitewater River, as measured by the USGS at Station 10256000, is generally slightly basic, ranging from pH 7.4 to pH 8.9, and averaging about pH 8.2.

A considerable amount of background information on water quantity and quality in the project area and the general project region is available in SCE's September 29, 2010, Application for Surrender of License (Attachment G) and in the Commission's July 3, 2013, Environmental Assessment for license surrender (Attachment K). The information in these two documents was reviewed and considered in preparing this Application for License.

### 2.3.2 Project-Related Impacts

#### 2.3.2.1 Impact Summary

This Application for License proposes to operate and maintain the facilities necessary to generate power in the Pine Powerhouse, as repaired by SCE, and to continue to deliver water to nearby communities, consistent with existing pre-1914 appropriative water rights. No changes to the facilities are proposed and no land-disturbing activities outside of the developed rights-of-ways are proposed. Furthermore, the water quality in the streams associated with the project is excellent and protective of beneficial uses, including water supply. Therefore there will be no changes to the existing environment, no impacts upon water quantity or quality associated, and the City does not propose any water quality enhancement measures.

### 2.4 Land and water uses

#### 2.4.1 Existing Setting

The project area is undeveloped apart from the project facilities, a small privately-owned cabin and adjacent small structures at Raywood Flat, and several unimproved Forest Service and City access roads. Dispersed recreation, such as hiking, is allowed on SBNF lands in the project area, but use is infrequent. There are no existing plans for the further development of the project area. The project is the only approved water use in the project area.

The Federal Power Act requires the Commission to consider the extent to which the project is consistent with federal or State comprehensive plans for improving, developing, or conserving a

waterway or waterways affected by the project. Four plans on the Commission's December 2012 list of comprehensive plans for California projects were identified as applicable to this project, as follows.

- California Department of Water Resources. 1994. California water plan update. Bulletin 160-93. Sacramento, California. October 1994. Two volumes and executive summary.
- California State Water Resources Control Board. 2006. Water quality control plan: Colorado River Basin. Resources Agency, Sacramento, California.
- Forest Service. 2005. San Bernardino National Forest land and management plan. Department of Agriculture, San Bernardino, California. September 2005.
- National Park Service. The Nationwide Rivers Inventory. Department of the Interior, Washington, D.C. 1993.

#### *A. Department of Water Resources, California Water Plan Update (1994)*

The California Water Plan Update for 1994 discusses the challenges facing California in meeting the growing demand for water in the State, the increasingly unreliable alternatives to local sources of water, and the need to safeguard existing water supplies, as in the following excerpts:

*"Since the last water plan update in 1987, California Water: Looking to the Future, Bulletin 160-87, evolving environmental policies have introduced considerable uncertainty about much of the State's developed water supply.*

*These actions affect the export capability from California's most important water supply hub, the Sacramento-San Joaquin Delta, while also imposing restrictions on upstream diverters. The Delta is the source from which two-thirds of the State's population and millions of acres of agricultural land receive part or all of their supplies. Today, areas of the State relying on the Delta for all or a portion of their supplies find these supplies unreliable. Such uncertainty of water supply delivery and reliability will continue until issues involving the Delta and other long-term environmental water management concerns are resolved.*

*Annual reductions in total water supply for urban and agricultural uses could be in the range of 500,000 af to 1,000,000 af in average years and 2,000,000 to 3,000,000 af in drought years. These reductions result mainly from compliance with the ESA biological opinions and proposed EPA Bay-Delta standards.*

*Californians are finding that existing water management systems are no longer able to provide sufficiently reliable water service to users... Until a Delta solution that meets the needs of urban, agricultural, and environmental interests is identified and implemented, there likely will be water supply shortages in both dry and average years.*

*While the six-year drought stretched California's developed supplies to their limits, innovative water management actions, water transfers, water supply interconnections, and changes in project operations to benefit fish and wildlife all helped to reduce the harmful effects of the prolonged drought. Today, water managers are looking into a wide variety of demand management and supply augmentation programs to supplement, improve, and make better use of existing resources.*

*Local surface water development includes direct stream diversions as well as supplies in local storage facilities. As a result of economic, environmental, and regulatory obstacles, local agencies are finding it difficult to undertake new water projects to meet their needs where supply shortfalls exist or are projected to occur in the future.*

*Colorado River supplies to the Colorado River and South Coast regions for urban and agricultural uses could decline from about 5,200,000 af to California's basic apportionment of 4,400,000 af annually. With Arizona and Nevada using less than their apportionment of water, their unused supply of Colorado River water was made available to meet California's requirements during recent years. Southern California was spared from severe rationing during most of the 1987-92 drought primarily as a result of about 600,000 af annually of surplus and unused Colorado River water that was made available to the Metropolitan Water District of Southern California. Even with this supply, however, much of Southern California experienced significant rationing in 1991. Supplemental Colorado River water cannot be counted on to meet needs in the future as Arizona and Nevada continue to use more of their allocated share of Colorado River water."*

#### *B. Water Quality Control Plan, Colorado River Basin (2006)*

The water quality control plan for the Colorado River Basin (Basin Plan) identifies a variety of current beneficial uses in the basin, which includes the San Gorgonio River and the North Fork of the Whitewater River. The identified beneficial uses include hydropower and water supply from existing facilities such as Project No. 344. The Basin Plan also establishes the water quality standards the State Water Board will consider in assuring the project's compliance with Section 401 of the Clean Water Act. As noted in the Basin Plan:

*"Federal regulations define water quality standards as including a state's water quality objectives, designated beneficial uses, and anti-degradation policy, which requires that "existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected" (40 CFR 131)."*

The Basin Plan includes several goals, management principals, and specific objectives that are relevant to the project, as follows.

##### Water Quality Goals and Management Principals

*"Preserve and enhance the quality of waters, both ground and surface, fresh and saline, for present and anticipated beneficial uses, taking social and economic factors into consideration."*

*“Preserve the integrity of ground water basins, so that the basins remain capable of storing water for beneficial uses.”*

*“Controllable water quality factors will be regulated to ensure preservation of the integrity of usable ground water basins.”*

*“Ground water recharge with water of adequate quality is encouraged, wherever feasible.”*

### Specific Water Quality Objectives

The Basin Plan includes water quality objectives that apply to all of the surface waters in the Colorado River Basin Region, including the East and South Forks of the Whitewater River and the San Gorgonio River. Several of these objectives are specific to waste discharges from industrial, agricultural, or domestic water uses, and therefore are not relevant. The project is located in undeveloped headwater reaches and the project does not generate or discharge waste. These objectives are as follows.

- *Aesthetic Qualities*
- *Tainting Substances*
- *Toxicity*
- *Suspended Solids and Settleable Solids*
- *Total Dissolved Solids*
- *Bacteria*
- *Biostimulatory Substances*
- *Radioactivity*
- *Chemical Constituents*
- *Pesticide Wastes*

The Basin Plan includes five additional specific water quality objectives: temperature, pH, dissolved oxygen, sediment, and turbidity. As described in the Basin Plan, these objectives appear to be oriented toward the discharge of treated wastewater. However, they provide useful water quality analytical guidance for water diversion-related effects and are therefore quoted here and considered in the impacts section at the end of this chapter.

- *“TEMPERATURE: The natural receiving water temperature of surface waters shall not be altered by discharges of waste unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses.”*
- *“pH: Since the regional waters are somewhat alkaline, pH shall range from 6.0-9.0. Discharges shall not cause any changes in pH detrimental to beneficial water uses.”*
- *“DISSOLVED OXYGEN: The dissolved oxygen concentration shall not be reduced below the following minimum levels at any time:*

*Waters designated:*

*WARM ..... 5.0 mg/l*  
*COLD ..... 8.0 mg/l*  
*WARM and COLD ..... 8.0 mg/l"*

- *"SEDIMENT: The suspended sediment load and suspended sediment discharge rate to surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses."*
- *"TURBIDITY: Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses."*

### *C. San Bernardino National Forest Land Management Plan (2005)*

The 2005 Land Management Plan (LMP) identified the project as being an existing facility located in the San Gorgonio Place. The description of the project in the "Setting" section of the LMP and the entire "Desired Condition" and "Program Emphasis" sections of the LMP for the San Gorgonio Place (Part 2, pages 87 and 88) are as follows:

*"Setting: ...The San Gorgonio FERC project is located within this Place. Originally designed for both hydroelectric generation and water supply, it is now only capable of producing water due to a massive flume failure resulting in a large-scale slope failure. It is no longer capable of producing electricity economically; however, it continues to divert water from the headwaters of the Whitewater River into Banning Canyon. The FERC license expired in 2003. Southern California Edison is seeking to decommission the hydroelectric generation capability and transfer the project to the Pass Water Agency. The Banning Heights area is now considering application for a special-use authorization for continued access to water from the diversion."*

*"Desired Condition: San Gorgonio Place is maintained as a naturally evolving and natural appearing landscape that functions as an alpine recreation setting containing wilderness and a wilderness portal. The valued landscape attributes to be preserved over time include the craggy silhouettes of the mountain peaks, the wind-carved alpine character, montane meadows, the bigcone Douglas-fir, ponderosa pine, mixed conifer, subalpine forests at higher locations and associated steep slopes and drainages, well-defined age-class mosaic in chaparral, the occurrence of rock outcrops, and natural appearing views from the scenic byway and Pacific Crest Trail. A wide variety of recreation uses will be provided, where appropriate and environmentally sustainable.*

*Chaparral and forested areas are managed to provide fire protection for adjacent urban communities, recreation areas, and wildlife habitat, and to protect from type conversion to grass. Habitat conditions for threatened, endangered and sensitive species are improving over time. Habitat linkages are intact and functioning. Feral cattle are removed; invasive nonnative plants are reduced over time. Heritage properties are identified, evaluated and interpreted and Native American partnerships are in place. Management of special-use recreation residences*

*and organization camps are improved. Property lines are located and managed and administrative rights-of-way are appropriately acquired."*

***"Program Emphasis:*** Community protection from wildland fire is of the highest priority. It will be emphasized through public education, fire prevention, and fuels management in cooperation with city, county and state agencies. Community protection projects identified in the San Gorgonio Wilderness may be implemented to reduce the risk of wildland fire to communities. Opportunities for development of fire management facilities in the east end (i.e., Heart Bar to Onyx Summit) will be explored. Forest health projects will be implemented to remove dead trees, reduce stand density and promote pre-fire suppression era fire return intervals. Reforestation projects will maintain forest diversity.

*Enhancement of plant and wildlife habitat and linkage corridors for threatened, endangered and sensitive species will be emphasized in all management activities. An active program of prescribed burning/fuelbreak maintenance is expected to result in quality Nelson's bighorn sheep habitat and deer winter/summer range. Wildlife corridors will be maintained or enhanced. Minimum in-stream flows and groundwater standards will be established for wildlife and to ensure that water use is managed at environmentally sustainable levels. Removal of feral cattle and Spanish broom will be emphasized.*

*Identification, evaluation and interpretation of heritage properties and Native American partnerships will be emphasized.*

*Management of special-use recreation residences and organization camps will be improved. Increased environmental education opportunities are expected within organization camps. Maintenance and improvement of recreation infrastructure is a priority as is development of safe snowplay areas and a dispersed camping strategy. Opportunities to acquire land for future re-routes of the Pacific Crest National Scenic Trail will be explored to improve recreation opportunities and to protect sensitive resources, as well as providing a contiguous land base in the wilderness. The Pacific Crest National Scenic Trail remains a priority for management and maintenance. National Forest staff expect to continue to work closely with developers, planners and local officials in order to reduce resource impacts and conflicts on national forest land. Accurate national forest boundaries will be reestablished and maintained. There will be a continued emphasis on preventing establishment of off-route vehicle travel and unauthorized off-trail use by mountain bikes.*

*The San Gorgonio FERC project will be analyzed to address decommissioning of the hydroelectric facilities and water delivery infrastructure. It will also address aquatic/riparian habitat improvements in Banning Canyon."*

Another section of the LMP that is relevant to the project is Goal 4.1b: Administer Renewable Energy Resource developments while protecting ecosystem health (Part 1, page 39), as follows.

*“Goal 4.1b - Administer Renewable Energy Resource developments while protecting ecosystem health.*

*Wind energy can be developed to generate mechanical power or electricity. Solar energy can be developed to provide heat, light, hot water, electricity and cooling for many uses. Hydro-electric power can be developed to provide both mechanical power and electricity for a multitude of uses. Due to tree and shrub mortality and other fuel treatments on the national forests, there is far more biomass available than can be disposed of through green waste recycling, landfills, or saw mills. Biomass from vegetation treatment is available for developing cogeneration facilities.*

*The desired condition for solar, wind and hydro-electric energy resources is that national forests will support the use of these renewable resources to help meet the growing energy needs in southern California while protecting other resources.*

*The desired condition for biomass is that as national forests generate timber and chipped woody material as a by-product of ecosystem management, healthy forest restoration, fuels management and community protection projects, that biomass will provide for energy co-generation when other higher value options are not available.*

*Outcome Evaluation Question: Has the national forest been successful at protecting ecosystem health while providing renewable resources for development?”*

Furthermore, in a letter dated December 8, 2010, the SBNF provided the following list of LMP goals and other sections that staff considers applicable to the project:

*“LRMP Part 1*

- Goal 3.1: Provide for Public Use and Natural Resource Protection*
- Goal 5.2: Improve riparian conditions*
- Goal 6.2: Provide ecological conditions to sustain viable populations of native and desired nonnative species*

*LRMP Part 2*

*WAT 1 – Watershed Function*

- Manage Riparian Conservation Areas (RCAs) to maintain or improve conditions for riparian dependent resources. RCAs include aquatic and terrestrial ecosystems and lands adjacent to perennial and intermittent streams. Riparian dependent resources are those natural resources that owe their existence to the area, such as fish, amphibians, reptiles, fairy shrimp, aquatic invertebrates, plants, birds, mammals, soil and water quality.*
- Achieve and maintain natural stream channel conductivity, connectivity and function.*

*WAT 2 – Water Management*

- Conserve and protect high-quality water sources in quantities adequate to meet national forest needs.*
- Actively pursue water rights and water allocation processes to secure instream flows and groundwater resources for current and future needs sufficient to sustain native riparian dependent resources and other national forest resources and uses.*

- Identify the need for and encourage the establishment of water releases, for current and future use, to maintain instream flow needs including channel maintenance, and to protect and eliminate impacts on riparian dependent resources
- Participate in all Federal Energy Regulatory Commission licensing and re-licensing efforts on National Forest System land to ensure sufficient consideration and protection is provided for riparian dependent resources. Incorporate instream flow, riparian, and other natural resource management requirements into 4(e) license conditions.
- Monitor water development projects to ensure that instream flows are meeting riparian dependent resource needs
- To maintain or improve habitat containing threatened, endangered, proposed, candidate, and sensitive species coordinate activities with CDF&G, NOAA Fisheries, USFWS, State Water Resource Control Board and other appropriate agencies involved in recommending instream flow and surface water requirements for waterways.
- Cooperate with federal, tribal, state and local governments and private entities to secure the instream flow needed to maintain, recover, and restore riparian dependent resources, channel conditions, and aquatic habitat.
- REC 2 – Sustainable Use and Environmental Design – Analyze, stabilize and restore areas where visitor use is appreciably affecting recreation experiences, public safety and environmental resources. Manage visitor use within the limits of identified capacities.
- REC 3 – Recreation Participation – Offer a wide range of high-quality, environmentally sustainable developed and dispersed recreation opportunities to a rapidly growing and culturally diverse visitor population. Ensure minimal visitor conflicts and effects to other resources. Develop new, environmentally sustainable recreation opportunities, areas and infrastructure to relieve concentrated demand within existing high-use areas and to accommodate future growth and new uses elsewhere.
- LM 1 – Landscape Aesthetics – Manage landscapes and built elements to achieve scenic integrity objectives.
- Tribal 1 – Traditional and Contemporary Uses – Continue traditional uses and access to traditionally used areas (as well as contemporary uses and needs) by tribal and other Native American interests. Use opportunities during project planning and implementation to identify, enhance, and protect traditionally or contemporarily used resources.

#### *LRMP Part 3*

- S11 to S33: Fish and Wildlife Standards when implementing all activities
- S46: Surface water diversions and groundwater extractions, including wells and spring developments will only be authorized when it is demonstrated by the user, and/or agreed to by the Forest Service, that the water extracted is excess to the current and reasonably foreseeable future needs of forest resources.
- S48: For non-hydroelectric and exempt hydroelectric surface water development proposals, instream flows favorable to the maintenance and restoration of riparian dependent and aquatic resources and channel conditions will be required.
- S49: Require fish passage instream flows associated with dams and impoundments where fish passage will enhance or restore native or selected nonnative fish distribution and not cause adverse effects to other native species.”

#### *D. National Park Service Nationwide Rivers Inventory (1993)*

Six miles of the South Fork Whitewater River appear on this inventory, but the plan notes that the East Fork and South Fork Dams are specifically excluded. The inventory describes qualities of the non-project portions of these rivers as follows:

*“Wild rivers (W): Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.”*

The “Outstandingly Remarkable Value (ORV)” identified for these reaches is scenery, as follows:

*“Scenery (S): The landscape elements of landform, vegetation, water, color, and related factors result in notable or exemplary visual features and/or attractions. When analyzing scenic values, additional factors -- such as seasonal variations in vegetation, scale of cultural modifications, and the length of time negative intrusions are viewed -- may be considered. Scenery and visual attractions may be highly diverse over the majority of the river or river segment.”*

#### 2.4.2 Project-Related Impacts

##### 2.4.2.1 Impact Summary

This Application for License proposes to operate and maintain the facilities necessary to generate power in the Pine Powerhouse, as repaired by SCE, and to continue to deliver water to nearby communities, consistent with existing pre-1914 appropriative water rights. No changes to the facilities are proposed and no land-disturbing activities outside of the developed rights-of-ways are proposed. Therefore there will be no changes to the existing environment and there are no inconsistencies with comprehensive plans associated with this Application for License.

While there will be no change to the existing environmental conditions, the City understands the importance of considering ways the project might be able to improve or enhance the existing resources and thereby help achieve goals and objectives of the comprehensive plans, as follows.

##### 2.4.2.2 California Water Plan Update

The California Water Plan Update speaks to the need to maintain existing water supplies and to the difficulty of replacing the existing water supplies via long-distance water exports. The project is consistent with and supportive of the California Water Plan Update because it will continue to utilize an existing source of water and thereby not increase demand for long-distance water export.

##### 2.4.2.3 Water Quality Control Plan (Basin Plan)

The Basin Plan is a means of implementing the federal regulations that require "existing instream water uses and the level of water quality necessary to protect the existing uses shall be

maintained and protected" (40 CFR 131)." The project is an existing beneficial use and therefore the continued operation and maintenance of the project for power generation and water supply is consistent with the purposes of the Basin Plan. Furthermore, the continued operation and maintenance of the project will not affect other beneficial uses. This is because there will be no change in the existing, excellent water quality conditions in the immediate vicinity of the project or as recorded by the USGS at Station 10256000, Whitewater River near White Water, 12.5 miles downstream from the project diversions.

#### 2.4.2.4 SBNF Land Management Plan

This Application for License proposes to continue to operate and maintain existing facilities that substantially predate the SBNF LMP. The project is specifically recognized in the LMP and in LMP monitoring reports as an existing and approved use consistent with Goal 4.1b, as follows:

*"Goal 4.1b - Administer Renewable Energy Resource developments while protecting ecosystem health."*

*"Hydro-electric power can be developed to provide both mechanical power and electricity for a multitude of uses..."*

*"The desired condition for solar, wind and hydro-electric energy resources is that national forests will support the use of these renewable resources to help meet the growing energy needs in southern California while protecting other resources..."*

Furthermore, the continued operation and maintenance of the project will not change the existing environmental conditions and therefore will help the SBNF achieve LMP goals and objectives relating to maintaining and protecting existing resources, including riparian habitat, wildlife, and water quality. For these reasons, the City believes the project is fully consistent with the SBNF LMP.

Beyond consistency, the project-related enhancement of riparian habitat along 1.5 miles of the upper San Gorgonio River in Burnt Canyon supports Goal 5.2, Improve Riparian Conditions, and WAT 1, Watershed Function, in significantly "improving conditions for riparian dependent resources." Other kinds of enhancement are constrained legally and/or physically.

The LMP objectives of providing instream flows and passage facilities for fish do not apply to the project because native or desired non-native fish are not present in project streams. No fish are present in the South Fork Whitewater River reaches utilized by the project. The SBNF plans to require SCE to eradicate the non-native rainbow trout that occur in the upper San Gorgonio River in Burnt Canyon as a license surrender-related mitigation measure.

#### 2.4.2.5 NPS Nationwide Rivers Inventory

The Nationwide Rivers Inventory specifically excludes the project-related facilities from the wild and scenic designations it applies to several miles of the Whitewater River. Therefore, the project is consistent with this Comprehensive Plan.

## 2.5 Recreational uses

### 2.5.1 Existing Setting

The project is located in a largely undeveloped area where public access is extremely limited due to a combination of steep mountain terrain, private lands, and locked gates. There are no developed recreation facilities and no such facilities are planned. Dispersed recreation is possible in the area, but little public use has been reported. There are two hiking routes or trails in the vicinity of the project that are extremely challenging but accessible for public use. These hiking trails are shown on local maps and appear in local trail guidebooks, as follows.

First, the Banning Canyon Road is the main access route or trail into the project area. It is owned and maintained by the City and has a locked gate at the mouth of Banning Canyon, at Bluff Street. The gate prevents public vehicle access to the City's watershed and groundwater management area, and in cooperation with the San Bernardino National Forest, prevents public vehicle access to National Forest lands via Forest Service Road 2S01. Nevertheless, it is possible for members of the public to hike about eight miles on this road to Raywood Flat, at about 7,000 feet of elevation, where the road is once again gated and locked and where one square mile of private property (TS1S, R2E, Sec. 31) is posted no trespassing. The lower part of Banning Canyon Road, closest to Bluff Street, and well away from the project facilities, appears to be used by local residents for short hikes.

The second trail, the Little San Gorgonio Peak Trail is a challenging, unimproved hiking trail that starts at Forest Service Road 2S01, in the vicinity of the Burnt Canyon Dam, and offers a strenuous uphill climb from the San Gorgonio River at about 5,000 feet above sea level to Little San Gorgonio Peak, located at 9,133 feet above sea level.

A considerable amount of background information on recreation in the project area and general project region is available in SCE's September 29, 2010, Application for Surrender of License (Attachment G) and in the Commission's July 3, 2013, Environmental Assessment for license surrender (Attachment K). The information in these two documents was considered in preparing this Application for License.

### 2.5.2 Project-Related Impacts

#### 2.5.2.1 Impact Summary

This Application for License proposes to operate and maintain the facilities necessary to generate power in the Pine Powerhouse, as repaired by SCE, and to continue to deliver water to nearby communities, consistent with existing pre-1914 appropriative water rights. No changes to the facilities are proposed and no land-disturbing activities outside of the developed rights-of-ways are proposed. Therefore there will be no changes to the existing environment and no impacts upon recreation resources associated with this Application for License.

While there will be no change to the existing environmental conditions, the City understands the importance of considering ways the project might be able to improve or enhance the existing recreational resources, as follows.

#### 2.5.2.2 Cooperate with SBNF Recreation Planning

The City understands the demand for recreation opportunities will grow as population increases in southern California and that the SBNF is considering allowing greater public access to the project area. The City has interests in protecting water quality in the project area and avoiding damage to the project facilities and the other water supply facilities in the area, but otherwise has no objection to cooperating with the SBNF to allow greater access to Forest lands. The City will cooperate with the SBNF in recreation-related planning to help assure our common interests.

### 2.6 Historical and Archeological Resources

#### 2.6.1 Existing Setting

The historical and archaeological resources in the project area were described at length in SCE's September 29, 2010, Application for Surrender of License (Attachment G), based on review of existing literature, consultation with agencies and interested parties, and field surveys in areas not covered in the literature.

Briefly, at the time of European contact, the project area was likely a transition zone between two Native American groups, the Serrano and the Cahuilla. Both of these groups practiced a hunting and gathering economy centered on seasonal use of the variety of plant and animal resources that occurred within their territory. The project area is located in extreme terrain that apparently precluded permanent or semi-permanent (e.g. seasonal) occupation by Native groups.

By the 1840's, the project area was being exploited by non-Native settlers for timber harvesting, hunting, animal trapping, and mineral mining. These uses were followed by stock raising and ranching. In 1876 the town of Banning was established along with a flowline to carry water from the San Gorgonio River to the town of Banning. Electric power generation was added to the water supply system in 1923 with the construction of the existing Project No. 344 facilities.

No archaeological resources were identified by SCE. However, several historic resources were identified, including Project No. 344, as described in the following.

Project No. 344, recorded as "The San Gorgonio Hydroelectric System," was determined eligible for the National Register of Historic Places as a district under Criteria A and C, with a Period of Significance extending from 1922 to 1930. Contributing elements of the Historic District are the East Fork Diversion Dam, intake and concrete-lined canal, South Fork Diversion Dam and intake, concrete-lined canal (including the storage tank and penstock), the former powerhouses, operator's bungalow, and garage. According to Criteria A and C, the project facilities are: 1) associated with events that have made a significant contribution to the broad patterns of our history; and 2) embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that

represent a significant and distinguishable entity whose components may lack individual distinction.

Two additional historic resources were identified. One was a site recorded as LSA-SCE441-H-1 and comprised of an historic can scatter. It was found along the Project No. 344 transmission line route between the Big Oaks Powerhouse and the Pine Powerhouse. The second was an isolated historic artifact, recorded as LSA-SCE441-I-1, consisting of a small-animal trap line comprised of two steel spring traps connected by a steel chain. This artifact is located adjacent to Flowline No. 1 between South Fork Dam and Raywood Flat.

A considerable amount of background information on historical and archaeological resources in the project area and general project region is available in SCE's September 29, 2010, Application for Surrender of License (Attachment G) and in the Commission's July 3, 2013, Environmental Assessment for license surrender (Attachment K). The information in these two documents was considered in preparing this Application for License.

### 2.6.2 Project-Related Impacts

This Application for License proposes to operate and maintain the facilities necessary to generate power in the Pine Powerhouse, as repaired by SCE, and to continue to deliver water to nearby communities, consistent with existing pre-1914 appropriative water rights. No changes to the facilities are proposed and no land-disturbing activities outside of the developed rights-of-ways are proposed. Therefore there will be no changes to the existing environment and no impacts upon cultural resources associated with this Application for License.

SCE is proposing to repair several damaged project facilities as a part of the license surrender for Project No. 344 and is undertaking studies and consultation necessary to identify and mitigate any adverse effects on these several historical resources.

## 2.7 Scenic and Aesthetic Resources

### 2.7.1 Existing Setting

The Project No. 344 facilities included in this Application for License occur in two different landscapes. One landscape is an extremely remote, rugged area in the San Gorgonio Mountains above 7,000 feet above sea elevation. The other is a lower elevation (below 5,400 feet) foothills landscape of ridges and broad gravel fans on the west side of the San Gorgonio Mountains. The scenic and aesthetic conditions in the vicinity the higher elevation facilities are described first in the following.

The East Fork Dam is located in a highly scoured, incised, largely barren channel at an elevation of about 7,180 feet above sea level adjacent to Forest Service Road 2S01. Viewing the East Fork Dam involves parking a vehicle and walking about 200 feet to locations on the bluff above the dam. The South Fork Dam is located in a forested area about 150 feet from Forest Service Road 2S01. The dam is largely screened from view. The Black Wheel Creek Dam is located in a forested area about 200 feet down an unimproved access road from Forest Service Road 2S01.

The dam is small and not easily seen from Forest Service Road 2S01. Viewing the Black Wheel Creek Dam involves turning off the main unimproved road and heading about 200 feet downhill to the dam site. This section of Forest Service Road 2S01 is not open to public vehicle access because it lies beyond private property that is gated, locked, and posted no trespassing. The private property, a one square mile parcel, TS1S, R2E, Section 31, is owned by two individuals and is minimally developed with a small cabin and several small out-buildings. The locations of the dams, in incised channels (especially East Fork Dam), on the east side of the mountains facing away from populated areas, and screened by forest (South Fork Dam and Black Wheel Creek Dam) preclude distant views of the three dams and minimize the potential for viewing by sensitive receptors.

Flowline No. 1 threads along the rugged mountain sides for a distance of about 20,750 feet (3.9 miles) descending gradually, about 33 feet per mile, from about 7,180 feet of elevation at the East Fork Dam to about 7,050 feet of elevation at the terminus of Flowline No. 1 at Raywood Flat. The flowline weaves in and out along the slopes, into a series of small forested tributaries and then out again along less forested, steep, and sometimes barren mountain slopes. The portions of the flowline in the tributaries are screened from view by topography and forest, while those occurring on barren slopes are likely visible for some considerable distance. The east-facing exposure, away from populated areas, and difficult access to potential viewing locations limits the number of sensitive receptors.

The Burnt Canyon Dam, Burnt Canyon Pipeline, Flowline No. 2, and the Pine Powerhouse all occur in the foothills landscape on the west-facing side of the San Gorgonio Mountains below about 5,400 feet of elevation (at Burnt Canyon Dam) and above about 4,200 feet of elevation (at Pine Powerhouse). This is a mountain-foot landscape dominated by the broad, uneven valley floor formed by the San Gorgonio River and rugged valley side slopes. The uneven valley floor consists of low hillocks of coarse gravel, incompletely covered by small trees and shrubs. The steep valley side slopes are incompletely covered by patchy forest and smaller dry-land trees and brush.

The Burnt Canyon Dam is located on the valley floor at the end of a rough, unimproved side road to Banning Canyon Road (which later becomes Forest Service Road 2S01). Upon approach the dam can be seen as a small, low concrete structure sited in a rocky, mostly barren stream channel. Immediately upstream of the dam is a narrow, incised, forested stream channel; below is a broad, uneven area of coarse gravel. This is an area owned by the City of Banning and dedicated for water supply purposes. There are locked gates that prevent unauthorized vehicle access. As a result, sensitive receptors are unlikely to be present in the vicinity of the dam. Some distant views of the Burnt Canyon Dam are possible from the community of Banning Heights and from other ridge top locations beyond the locked gates. However, the dam is small, blends in with the rocky valley floor, and is difficult to see even by knowledgeable viewers.

A small diameter, above-ground pipeline leaves the dam and heads along the valley side slopes, in a southerly direction screened in places by sparse, dry-land vegetation and then visible in other places. The pipeline is mounted on a series of small concrete blocks and extends about one mile to the head of Flowline No. 2, adjacent to the site of SCE's Big Oaks Powerhouse. This pipeline is also well beyond the locked gates and therefore few sensitive receptors have access to this site.

The small scale of the pipeline and its route through the trees and brush makes it virtually impossible to see from the distant viewpoints beyond the locked gates.

Flowline No. 2 runs for a distance of about 8,928 feet (1.7 miles) along the southern side of the valley, beginning at an elevation of about 5,250 feet above sea level and ending at about 5,200 feet above sea level, having descending about 50 feet over 1.7 miles, or about 29 feet per mile. The flowline consists mainly of a rectangular concrete canal about two feet deep and three feet wide, generally covered by boards that act to keep debris from entering the canal. There is one section of the canal, about 100 feet long, that consists of bolted segments of sheet steel. The canal portion of the flowline terminates in a headworks and water then flows through a steel penstock into the Pine Powerhouse. Flowline No. 2 is generally screened by trees and also difficult to see because of its distance from viewpoints located beyond the locked gates. The closest residences are located in Forest Falls to the northwest (4.5 miles away), Oak Glen to the west (2.5 or more miles away), and in Banning Heights (1.5 or more miles away).

The Pine Powerhouse is a 700 square foot, two-storey high concrete structure located on the edge of the valley floor at an elevation of about 4,320 feet above sea level. Adjacent to the powerhouse structure is a small switchyard and a 180 foot long tailrace. The area around the powerhouse is sparsely vegetated by dry-land trees and brush. These facilities can be seen in the distance from adjacent ridges, but are blocked by topography from view by the residences closest to the project area, in Forest Falls, Oak Glen, and Banning Heights.

A considerable amount of background information on water quantity and quality in the project area and general project region is available in SCE's September 29, 2010, Application for Surrender of License (Attachment G) and in the Commission's July 3, 2013, Environmental Assessment for license surrender (Attachment K). The information in these two documents was considered in preparing this Application for License.

Among other things, SCE's Application for Surrender of License included the identification of several key observation points and analyses of the views and aesthetics of the Project No. 344 facilities with respect to the surrender-related actions, including repairs to several of the facilities described above. The repairs proposed for East Fork Dam, South Fork Dam, and Black Wheel Creek Dam will not substantially change their scale or appearance. The replacement of Flowline No. 1 with a buried pipeline will have the effect of reducing the visual contrast created by the pre-existing rectangular concrete canal. The removal of the pipeline below the Burnt Canyon Dam and its replacement with a buried pipeline will reduce visual contrasts in this location. The restoration of several damaged and/or unsafe sections of the Flowline No. 2 right-of-way will not substantially change the appearance of this facility.

### 2.7.2 Project-Related Impacts

This Application for License proposes to operate and maintain the facilities necessary to generate power in the Pine Powerhouse and deliver water to nearby communities, consistent with existing pre-1914 appropriative water rights. No changes to the facilities are proposed in this Application for License. Therefore, there will be no changes to the existing environmental conditions and no impacts on scenic and aesthetic resources associated with this Application for License.

Furthermore, based on the above information and analyses, the City believes project facilities are small in scale, have historic interest, are isolated from the general public, and blend in well with their surroundings from the distant viewpoints.

### 3.0 Consultation with Federal, State, and Local Agencies

#### 3.1 Information Package, Agency/Public Meeting, and Comment Letters

The First Stage Consultation for this Application for License was initiated in March 2002. An Initial Consultation Package was circulated for review and comment and an agency and public scoping meeting was conducted in the City's Council Chambers during the morning of April 11, 2002. The City, SGPWA, and BHMWC hosted a visit to the project area during the afternoon of the same day. Written comments on the Initial Consultation Package were due on June 10, 2002. The following comment letters were considered in preparing this Application for License.

1. April 12, 2002. Oak Valley LLP, P.O. Box 645, 10410 Roberts Road, Calimesa, CA 92320, signed by Mark Knorrtinga.
2. April 12, 2002. California Trout, 870 Market Street, Suite 859, San Francisco, CA 94102, signed by Jim Edmondson, Conservation Director.
3. June 7, 2002. San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408, signed by Ruth M. Wenstrom on behalf of Michael J. Dietrich, Acting Deputy Forest Supervisor.
4. June 10, 2002. Law Offices of Art Bunce on behalf of Agua Caliente Band of Cahuilla Indians, 430 North Cedar Street, Suite H, Escondido, CA 92025, signed by Art Bunce, Tribal Attorney.
5. June 10, 2002. Torres-Martinez Desert Cahuilla Indians, P. O. Box 1160, 66-725 Martinez Road, Thermal, CA 92274, signed by Alberto Ramirez, Tribal Environmental Director.
6. June 10, 2002. Cabazon Band of Mission Indians, 84-245 Indio Springs Parkway, Indio, CA 92203, signed by John A. James, Tribal Chairman.
7. June 13, 2002. Augustine Band of Cahuilla Mission Indians, 84481 Avenue 54, P. O. Box 846, Coachella, CA 92236, signed by Sirirat Chullakorn, Environmental Coordinator.
8. July 3, 2002. U.S. Department of Fish and Wildlife Service, Ecological Services, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, CA 92008, signed by Karen A. Evans, Assistant Field Supervisor.
9. August 6, 2002. Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, CA 95825, signed by the Regional Director.

10. August 8, 2002. Aqua Caliente, Band of Cahuilla Indians, 650 E. Tahquitz Canyon Way, Palm Springs, CA 92262, signed by Richard M. Milanovich, Tribal Chairman.

Copies of these letters are provided in Attachment H.

### 3.2 Project No. 344 Application for Surrender of License

Following First Stage Consultation, the City entered into negotiations with SCE and team with SCE in developing several sections of the Project No. 344 Application for Surrender of License. City consultants carried out the aquatic resources and riparian habitat studies that were included as Appendices in SCE's Exhibit E Environmental Report. City consultants also contributed information and analyses that were used by SCE in preparing several other sections of the Application. And, the City provided a number of editorial recommendations. By agreement with SCE, the proposed actions in SCE's Application for Surrender of License included the continued operation and maintenance of selected project facilities. And, SCE's Exhibit E Environmental Report provided substantial information and analyses pertaining to the continued operation and maintenance. For these reasons, several agencies, tribes, and others submitted comments on these evaluations. The City then provided responses to these comments.

1. December 6, 2010. City of Banning, 99 E. Ramsey Street, P. O. Box 998, Banning, CA 92220, signed by Duane Burk, Director of Public Works.
2. December 24, 2010. City of Banning, 99 E. Ramsey Street, P. O. Box 998, Banning, CA 92220, signed by Duane Burk, Director of Public Works.
3. December 8, 2010. United States Department of Agriculture, Forest Service, Office of the General Counsel, Pacific Region-San Francisco Office, 33 New Montgomery, 17th Floor, San Francisco, CA 94105, signed by Joshua S. Rider, Attorney for the Forest Service.
4. December 6, 2010, Science & Critical Thinking Co-Op Group, 1312 Daylily Drive, Beaumont, CA 92223, signed by Jennifer Taylor, Instructor/Coordinator.

Copies of these letters are provided in Attachment I.

### 3.3 Project No. 344 AIR and Scoping Documents 1 and 2

There were three subsequent comment and response cycles in connection with license surrender that included consideration of continued operation and maintenance in connection with a Commission Additional Information Request, and Commission Scoping Documents 1 and 2. The several license surrender-related comment letters and City responses to comments are relevant to continued operation and maintenance and considered in preparing this Application for License, as follows.

1. June 21, 2011. City of Banning, 99 E. Ramsey Street, P. O. Box 998, Banning, CA 92220, signed by Duane Burk, Director of Public Works.
2. July 15, 2011. City of Banning, 99 E. Ramsey Street, P. O. Box 998, Banning, CA 92220, signed by Duane Burk, Director of Public Works.
3. January 26, 2012. City of Banning, 99 E. Ramsey Street, P. O. Box 998, Banning, CA 92220, signed by Duane Burk, Director of Public Works.
4. July 12, 2011. San Bernardino National Forest, 602 South Tippecanoe Avenue, San Bernardino, CA 92408, signed by Jody Noiron, Forest Supervisor.
5. July 18, 2011. Department of Fish and Game, Inland Deserts Region, 3602 Inland Empire Blvd., Suite C-220, Ontario, CA 91764, signed by Anna Ewing, Staff Environmental Scientist.
6. July 25, 2011. United States Department of the Interior, Fish and Wildlife Service, Ecological Services, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011, signed by Jennes E. McBride for Kennon A. Corey, Assistant Field Supervisor.
7. August 29, 2011. Agua Caliente Band of Cahuilla Indians, Tribal Historic Preservation Office, 5401 Dinah Shore Drive, Palm Springs, CA 92264, signed by Sean Milanovich, Cultural Specialist.

Copies of these letters are provided in Attachment J.

### 3.4 Agency Consultation Meetings

1. April 11, 2002. An agency/public meeting with interested agencies, non-governmental organizations, and members of the public to obtain comments on environmental issues to be addressed and studies and analyses that should be included in the Application for License.
2. January 20, 2004. A meeting with the San Bernardino National Forest, including Gary Earney, Kathie Meyer, and Uyen Doan, and Bob Hawkins of the Pacific Regional-San Francisco Office to discuss the project, environmental issues and study needs, and NEPA documentation needs and options.
3. March 30, 2004. A meeting with the San Bernardino National Forest, including Gary Earney, Kathie Meyer, and Uyen Doan, and Bob Hawkins of the Pacific Regional-San Francisco Office to discuss the project and regulatory requirements, issues regarding rebuilding damaged portions of Flowline No. 1 and the enhancement of riparian habitat in Burnt Canyon.

4. April 26, 2006. A meeting with Scott Dawson, State Department of Fish and Wildlife, to discuss the project, fish and wildlife resources in the project area, and project-related effects.
5. May 2, 2006. A meeting with Kim Boss, San Bernardino National Forest, and Jesse Bennett, U.S. Fish and Wildlife Service, to discuss the project, fish and wildlife resources in the project area, and project-related effects.
6. May 16, 2006. A meeting with Jim Canaday, State Water Resources Control Board, to discuss the project, the resources at the diversion dams and project-related effects, and the regulatory requirements for continued operation and maintenance.
7. June 22, 2006. A meeting with the San Bernardino National Forest, including Gary Earney, John Goodman, and Uyen Doan, to discuss the riparian habitat and fishery resources and potential project-related effects.
8. July 29, 2010. A meeting with the San Bernardino National Forest, including Pam Bierce, Deb Nelson, Kim Boss, Uyen Doan, Richard Thornburg, Gabe Garcia, Jerry Sirski, and Melinda Lyon to discuss the Commission's requirements and evaluation processes, SBNF roles and responsibilities, opportunities for coordination, and key SBNF project-related issues.
9. March 14, 2013. A meeting with the San Bernardino National Forest, including the Forest Supervisor, Jody Noiron, Al Colby, Jerry Sirski, and Robert G. Taylor, and Pacific Region-San Francisco Office hydropower assessment staff, including Bob Hawkins, Keaton Norquist, and Nancy Fleener, to discuss the project and a range of issues including LMP consistency.

List of Attachments

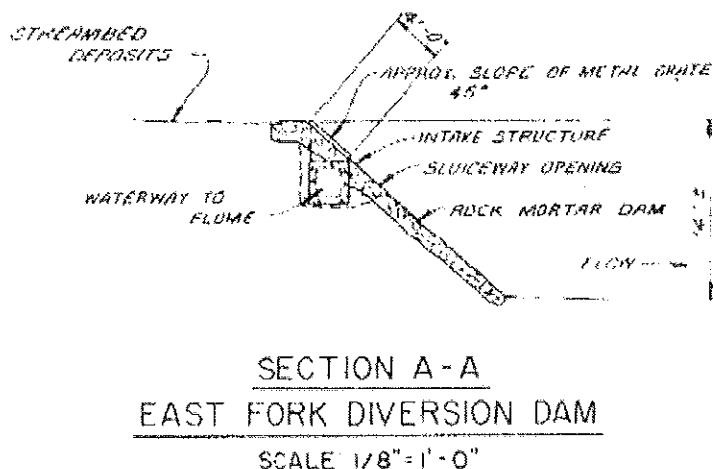
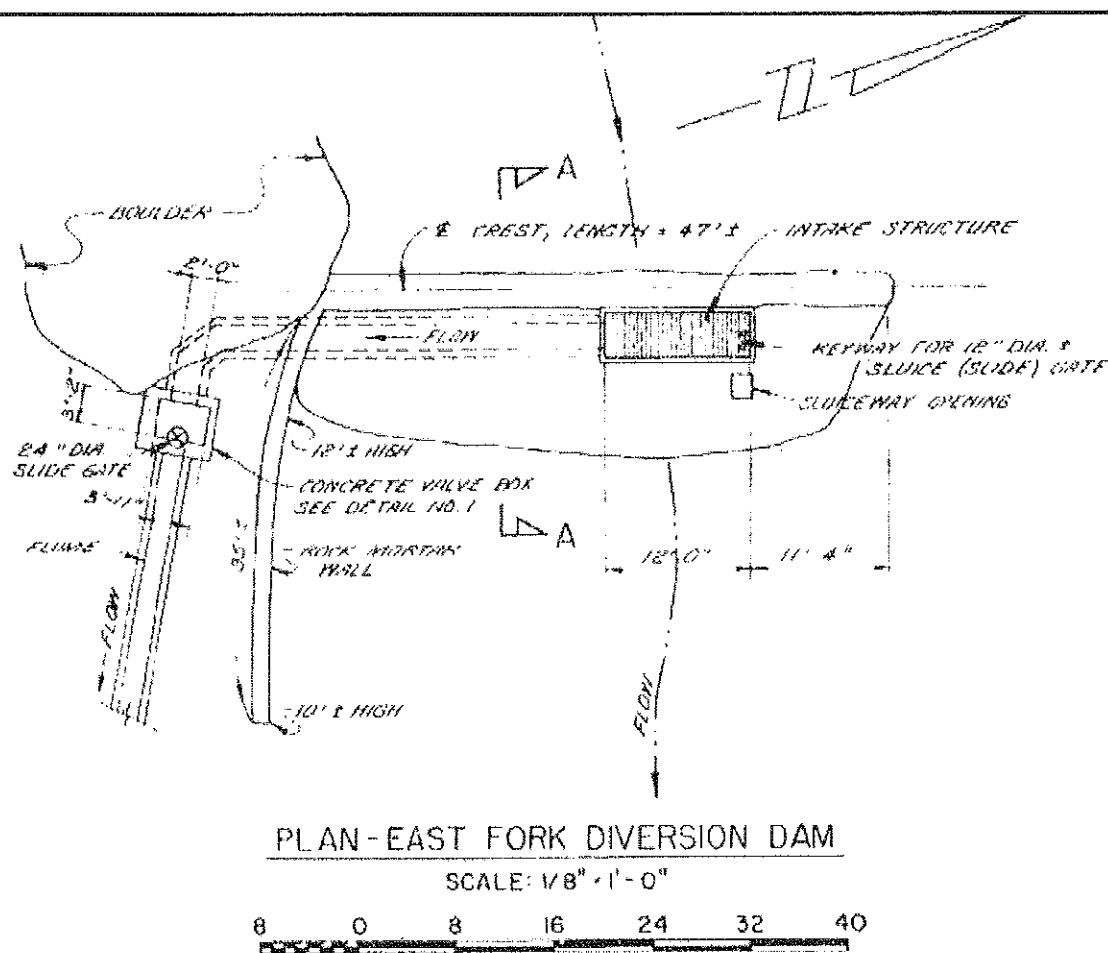
- A. Dr. Richard Harris Riparian Report 2005
- B. Dr. Richard Harris Riparian Report 2010
- C. Thomas Payne & Associates Fishery Reports 2005 and 2010
- D. SCE Wildlife Survey Report 2012
- E. SCE Mountain Yellow-Legged Frog Survey Report 2012
- F. SCE Reptile Survey Addendum 2012
- G. SCE Application for Surrender of License
- H. Agency/Public Comment Letters First Stage Consultation
- I. Comments & Responses SCE Application for Surrender of License
- J. Comments & Responses FERC AIR, SD-1, and SD-2
- K. FERC Environmental Assessment for Project No. 344
- L. Section 401 Water Quality Certification Request

**EXHIBIT F**

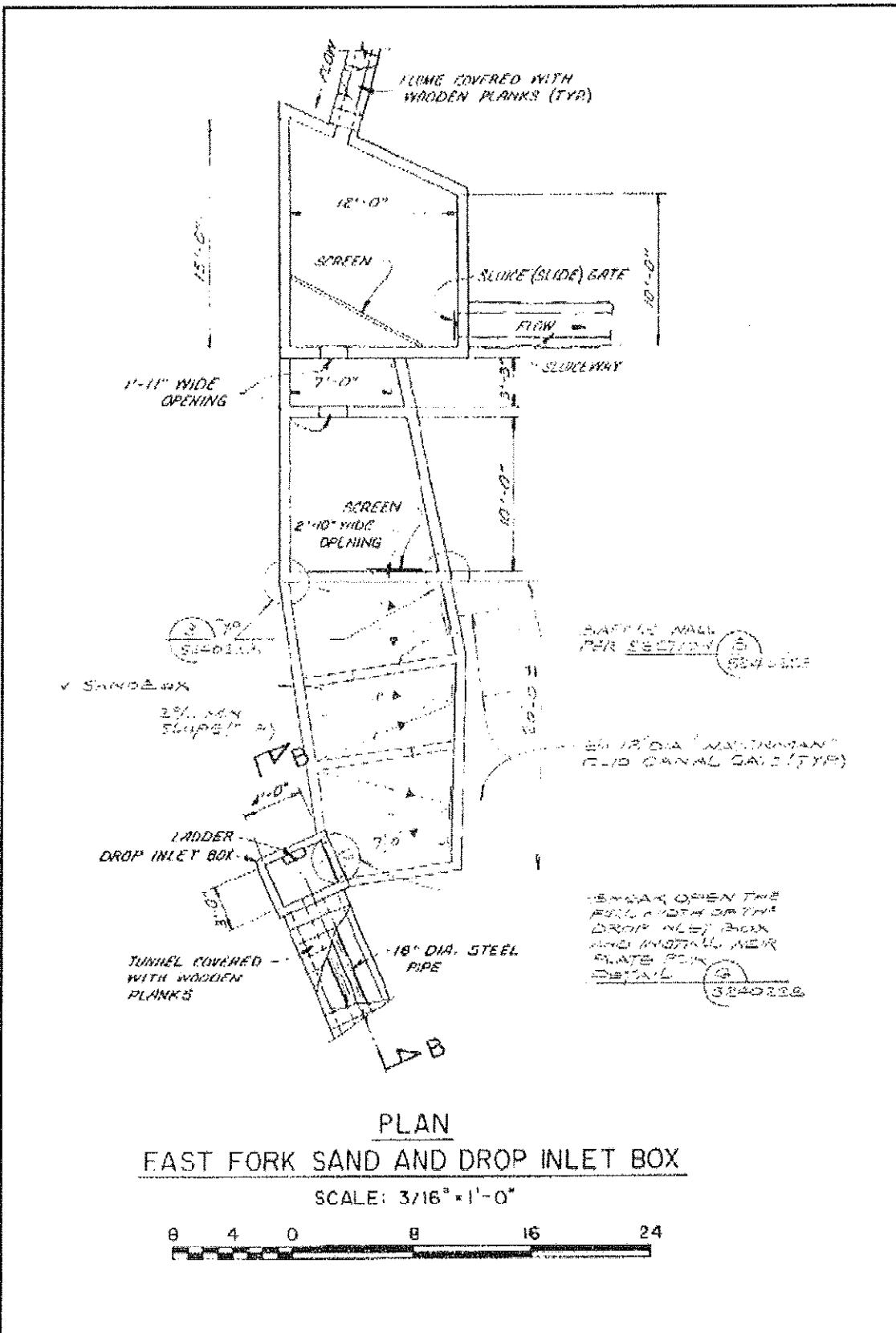
**GENERAL DESIGN DRAWINGS OF THE  
PRINCIPAL PROJECT WORKS (PRELIMINARY)**

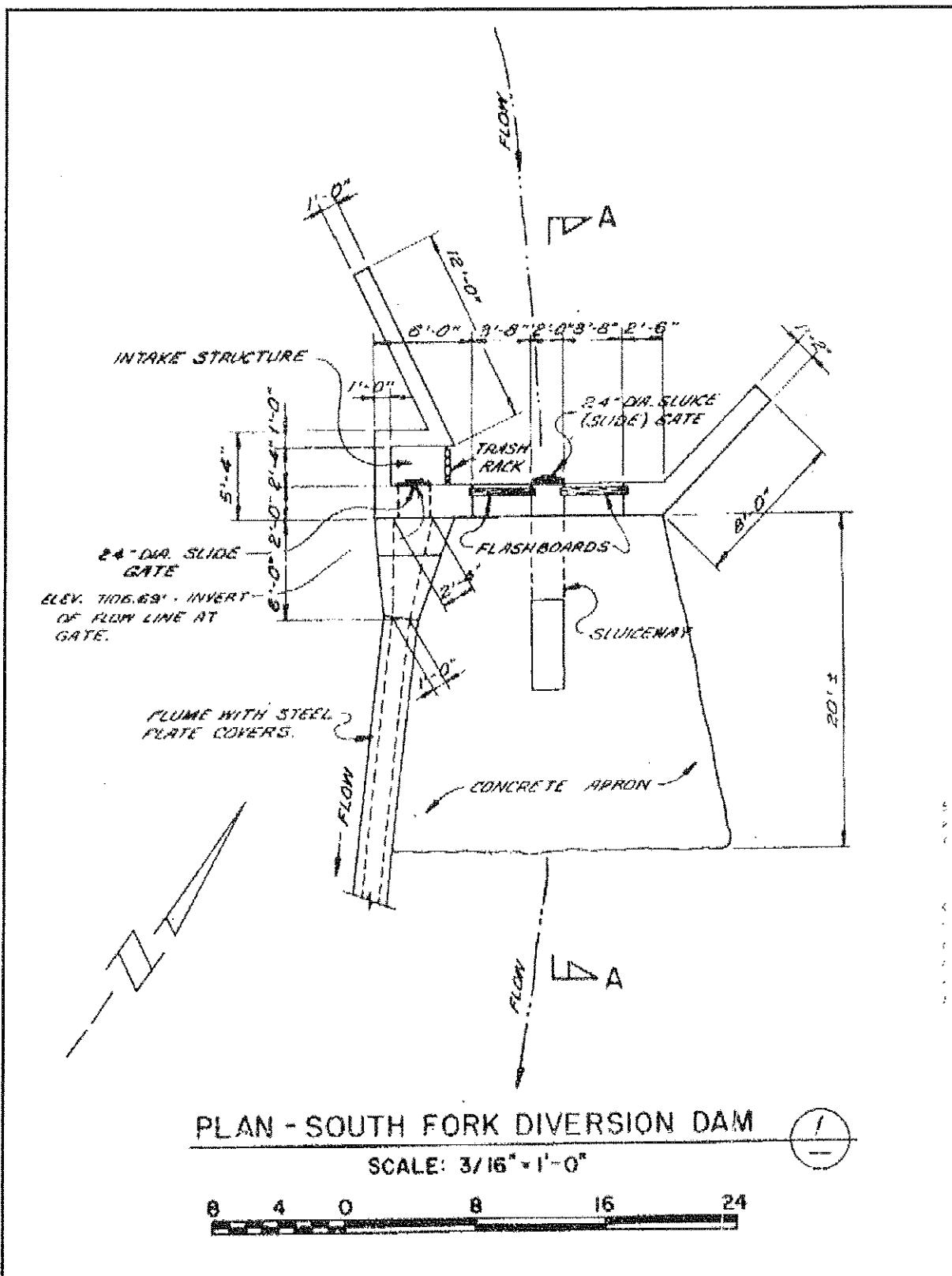
**APPLICATION FOR LICENSE FOR A  
MINOR WATER POWER PROJECT,  
5 MEGAWATTS OR LESS**

**WHITEWATER FLUME 938 KW WATER POWER PROJECT**



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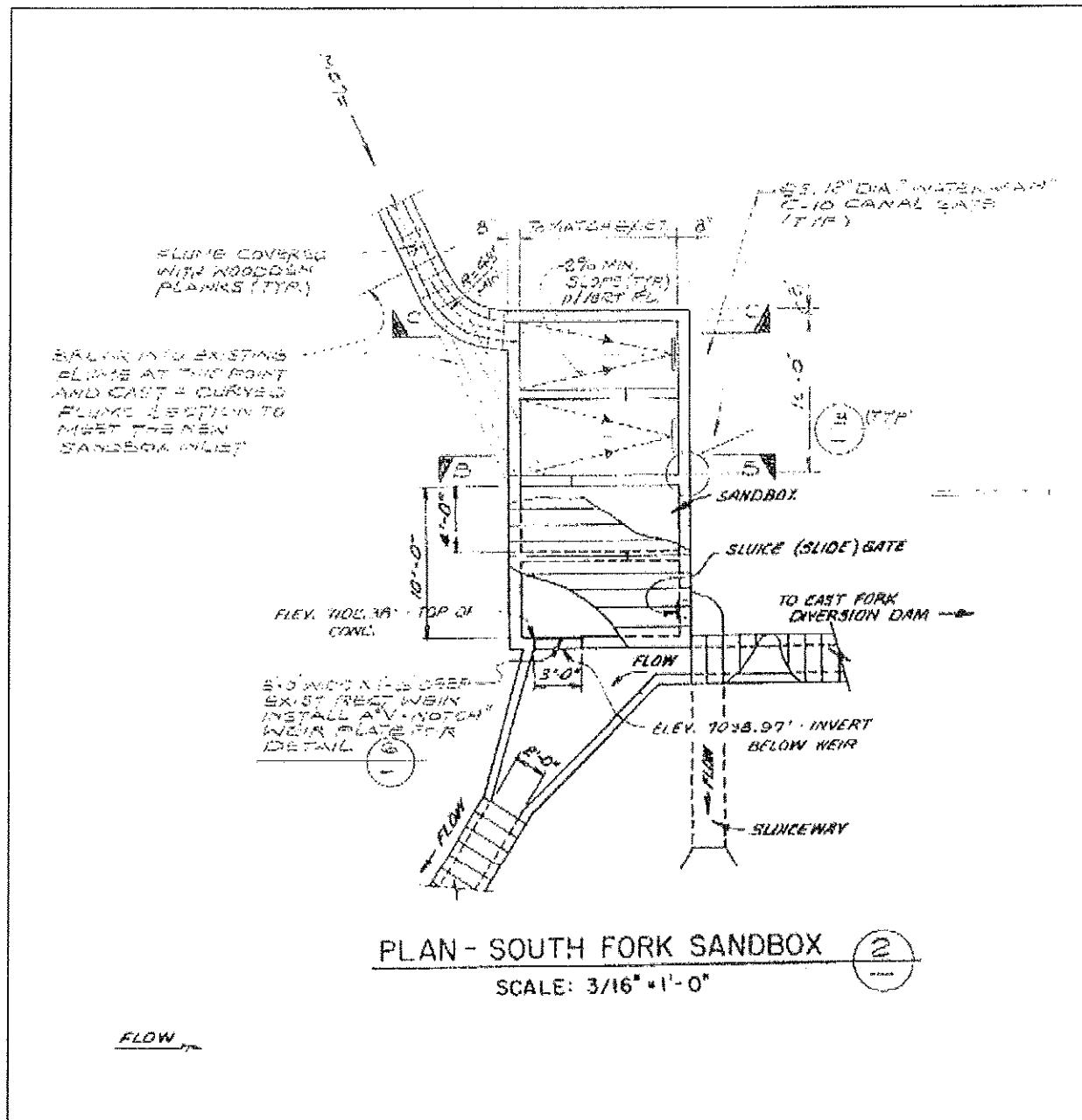


## PLAN - SOUTH FORK DIVERSION DAM

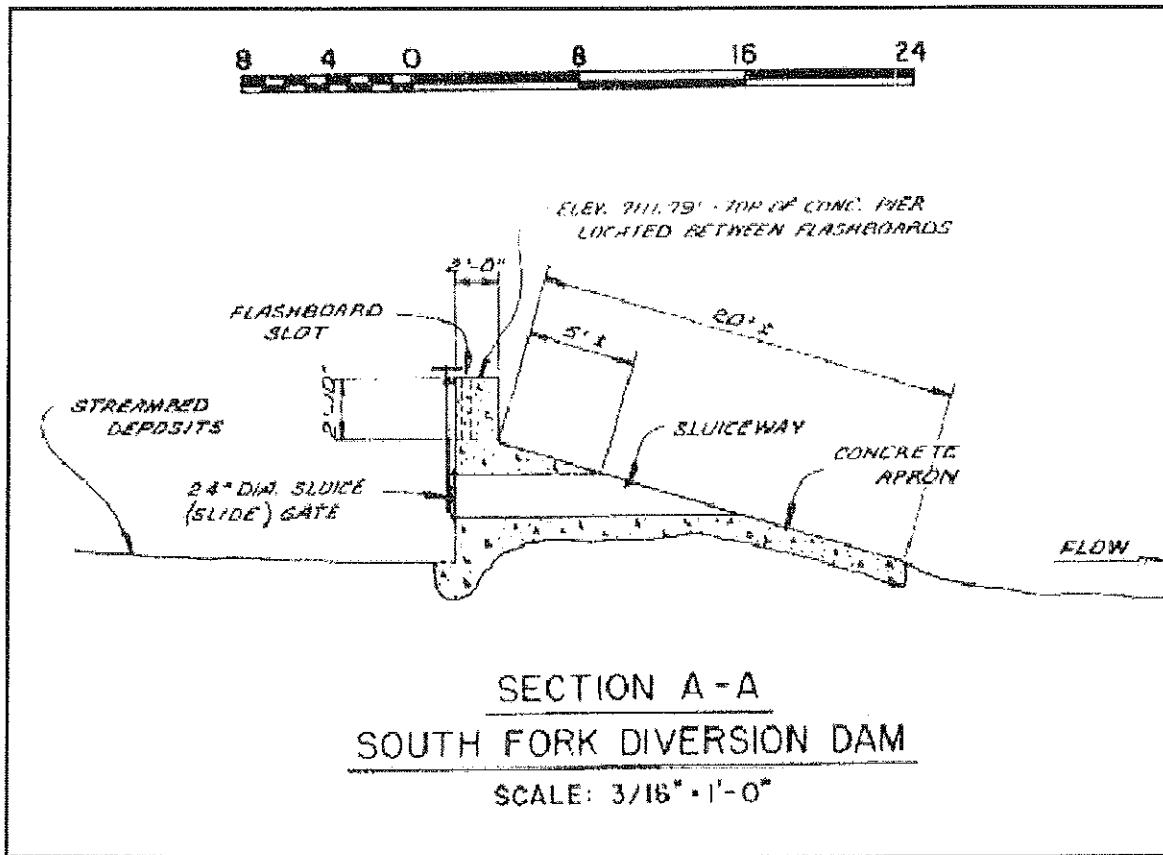
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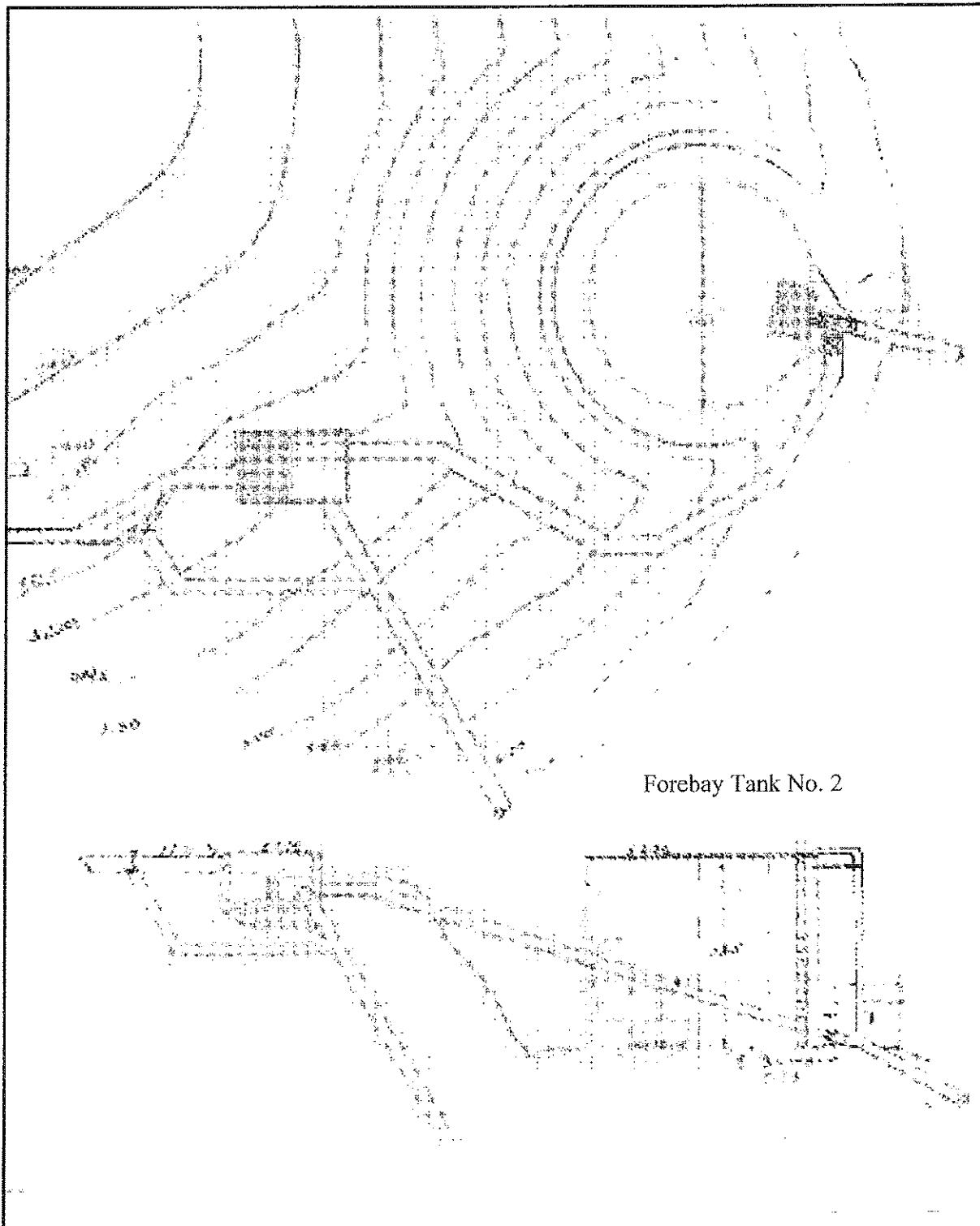
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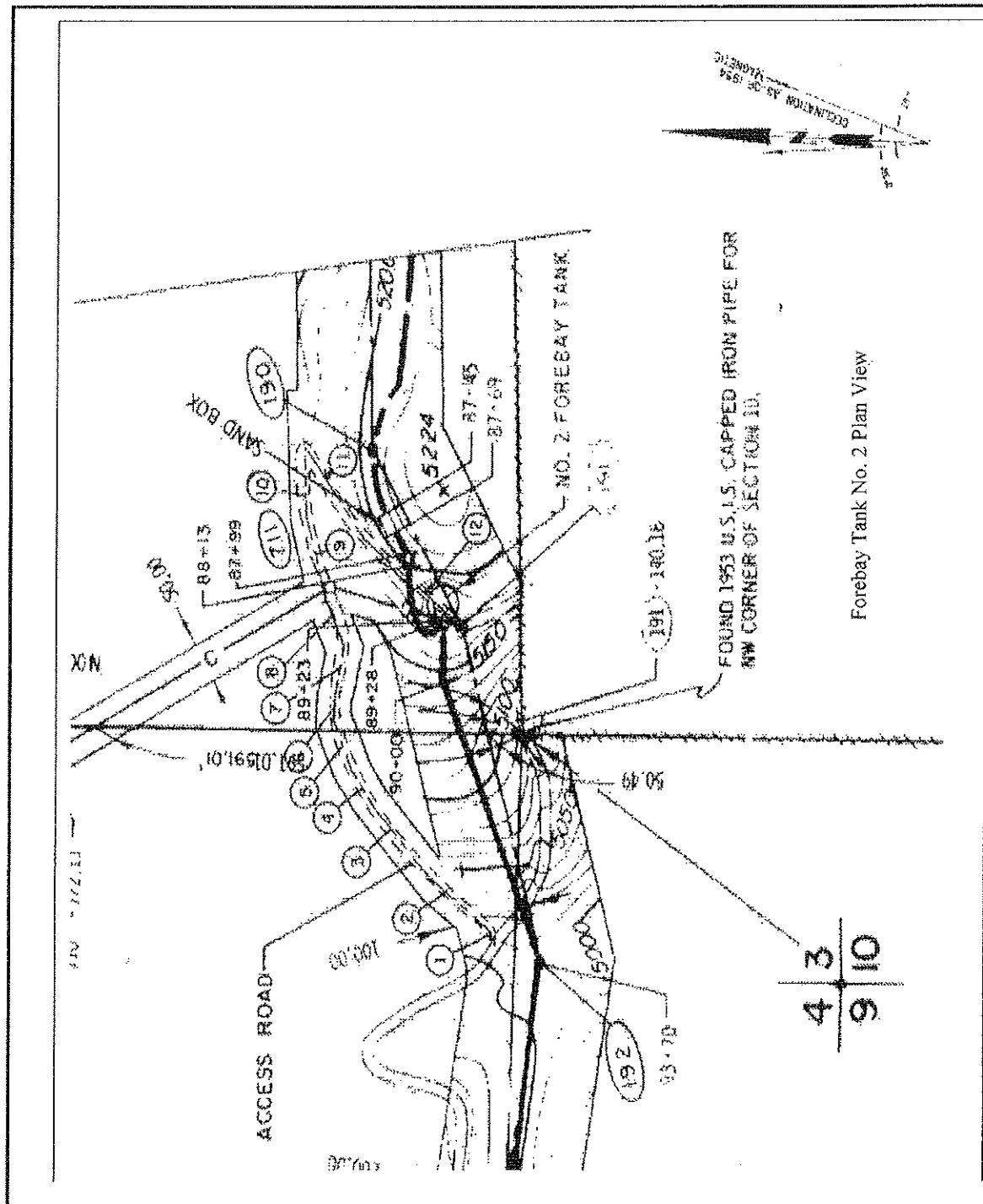
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Forebay Tank No. 2

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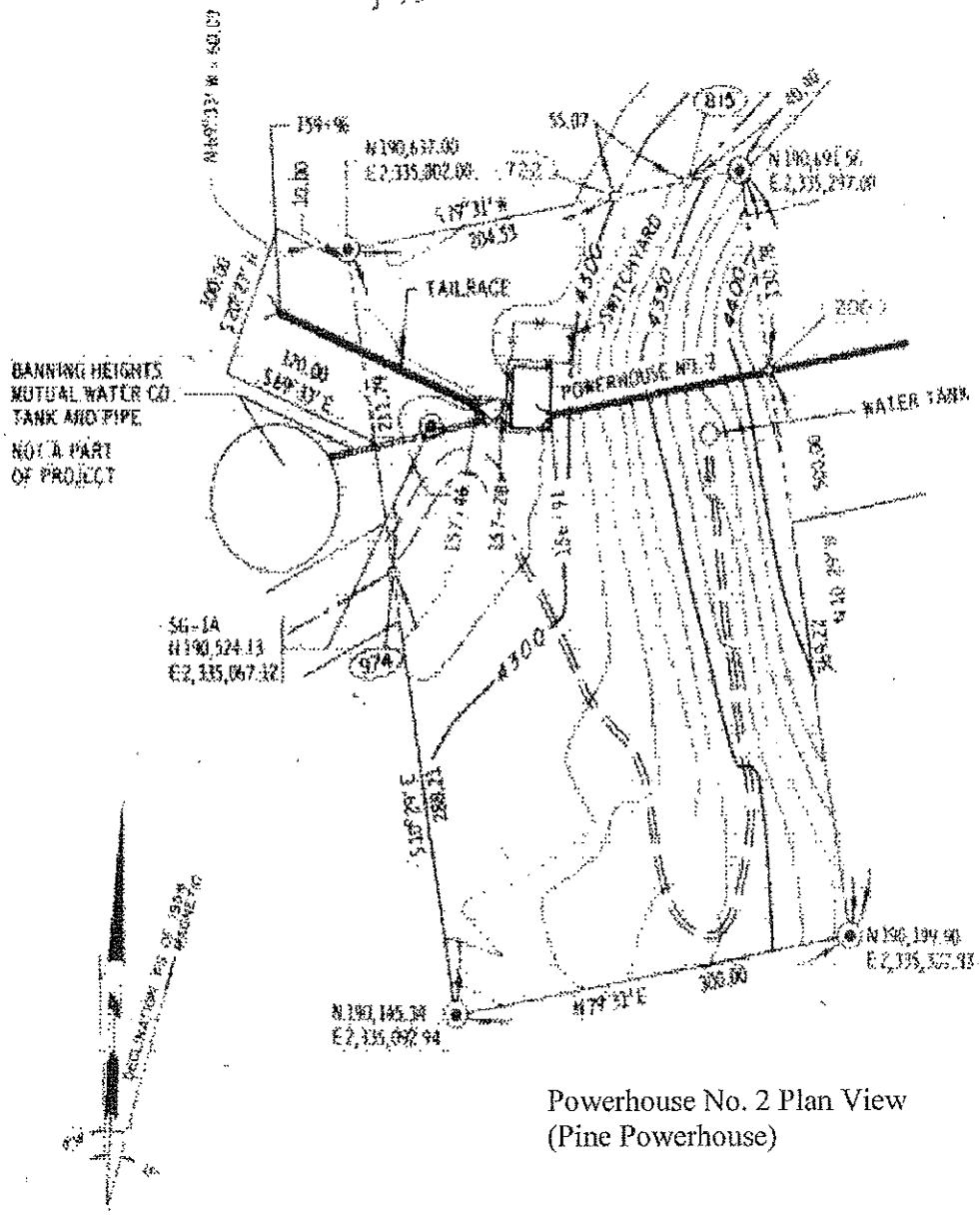
## Forebay Tank No. 2 Plan View

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NEW CORNER OF SECTION 10.

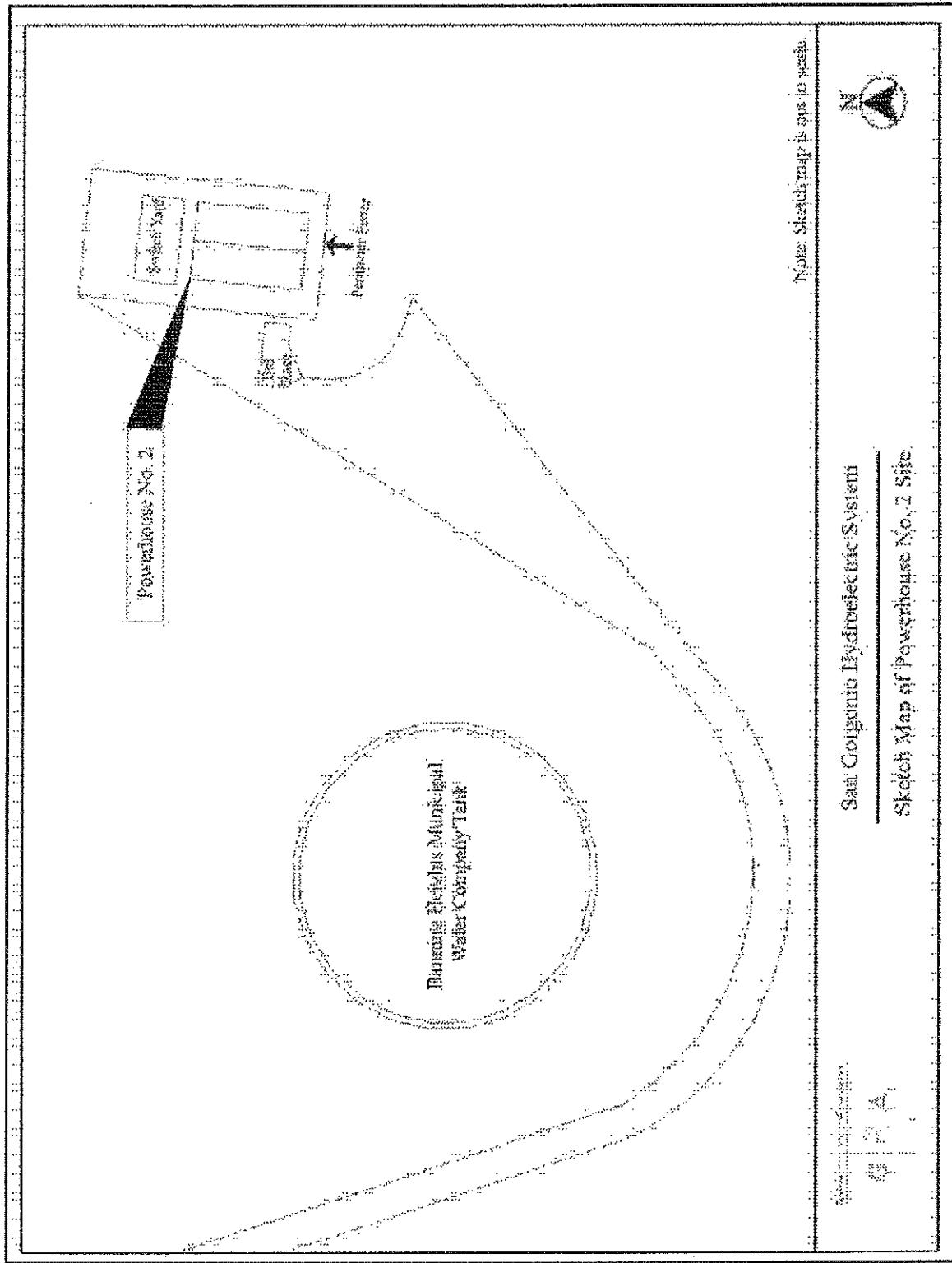
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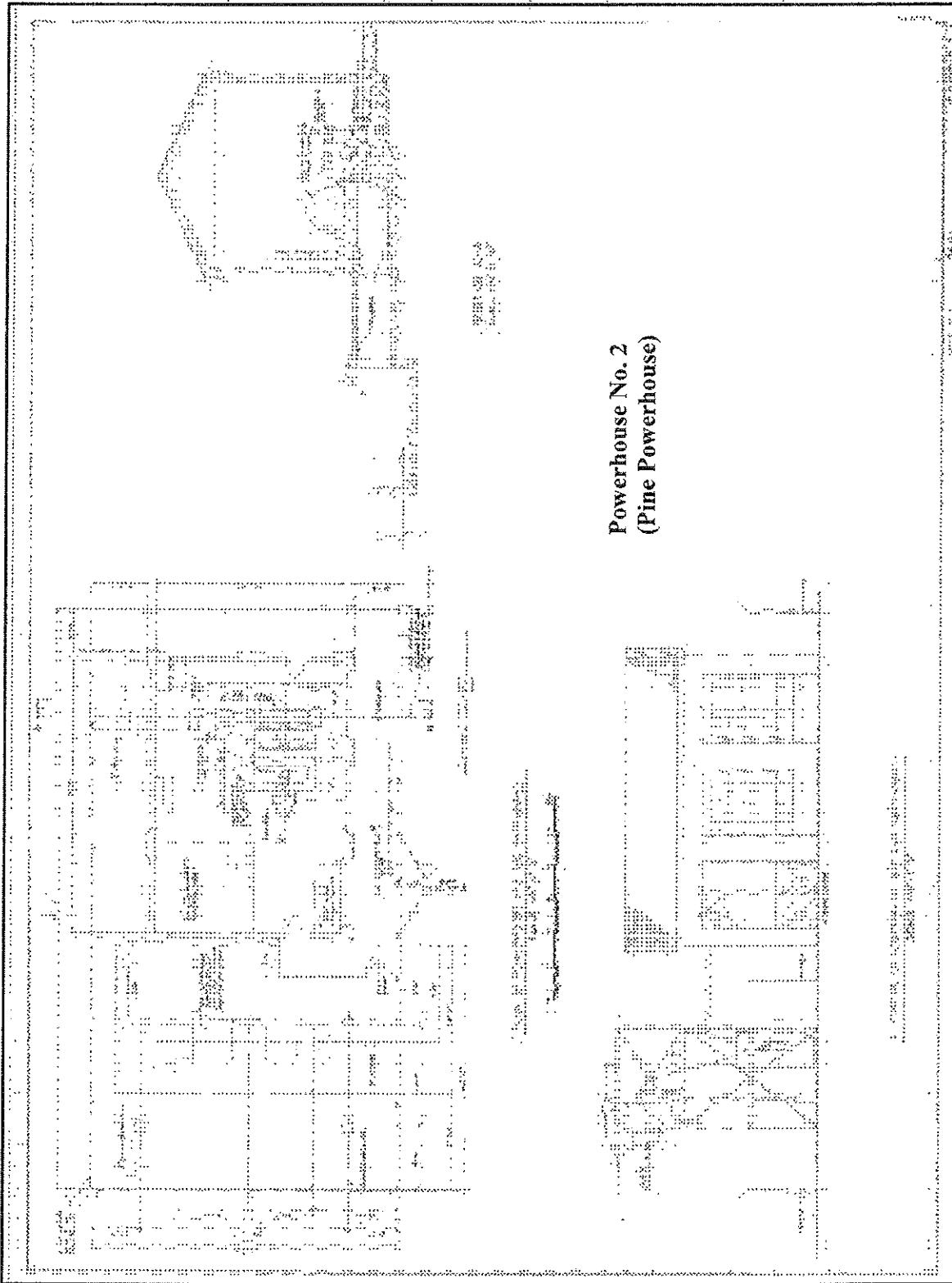
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### Powerhouse No. 2 Plan View (Pine Powerhouse)

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## Powerhouse No. 2 (Pine Powerhouse)

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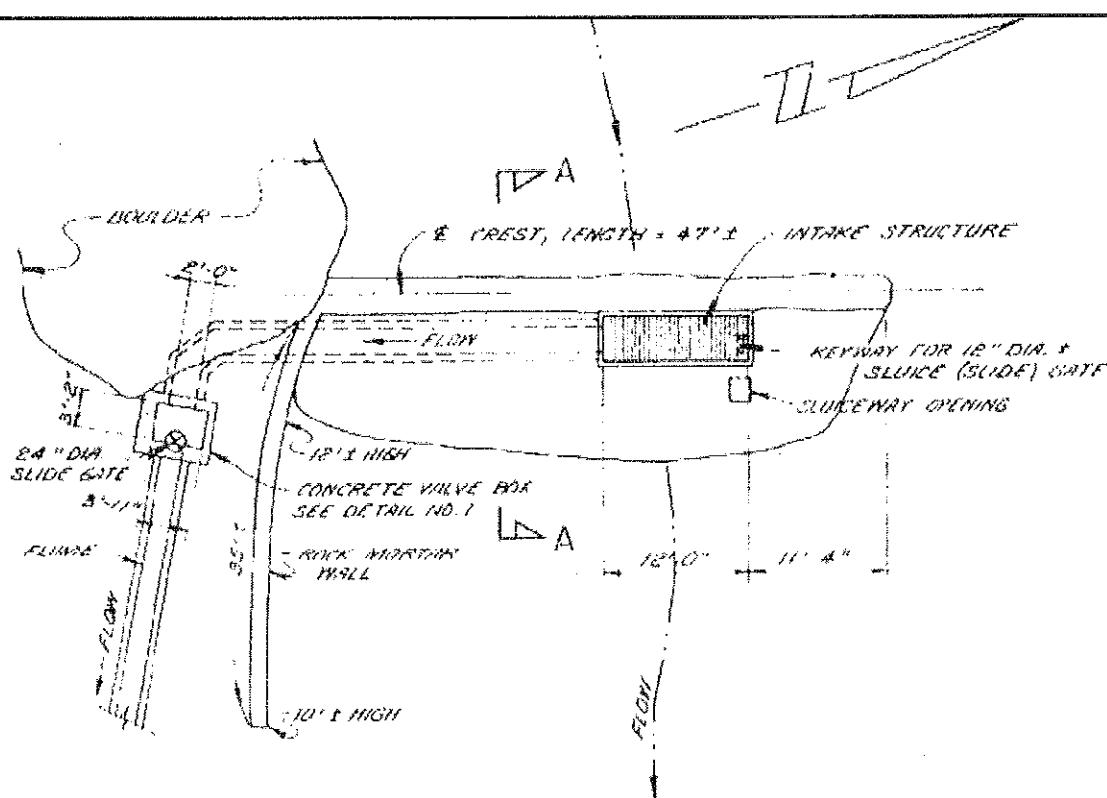
**EXHIBIT F**

**GENERAL DESIGN DRAWINGS OF THE  
PRINCIPAL PROJECT WORKS (PRELIMINARY)**

**APPLICATION FOR LICENSE FOR A  
MINOR WATER POWER PROJECT,  
5 MEGAWATTS OR LESS**

**WHITEWATER FLUME 938 KW WATER POWER PROJECT**

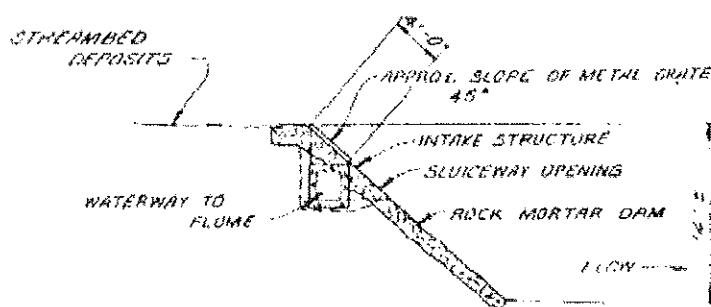
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PLAN - EAST FORK DIVERSION DAM

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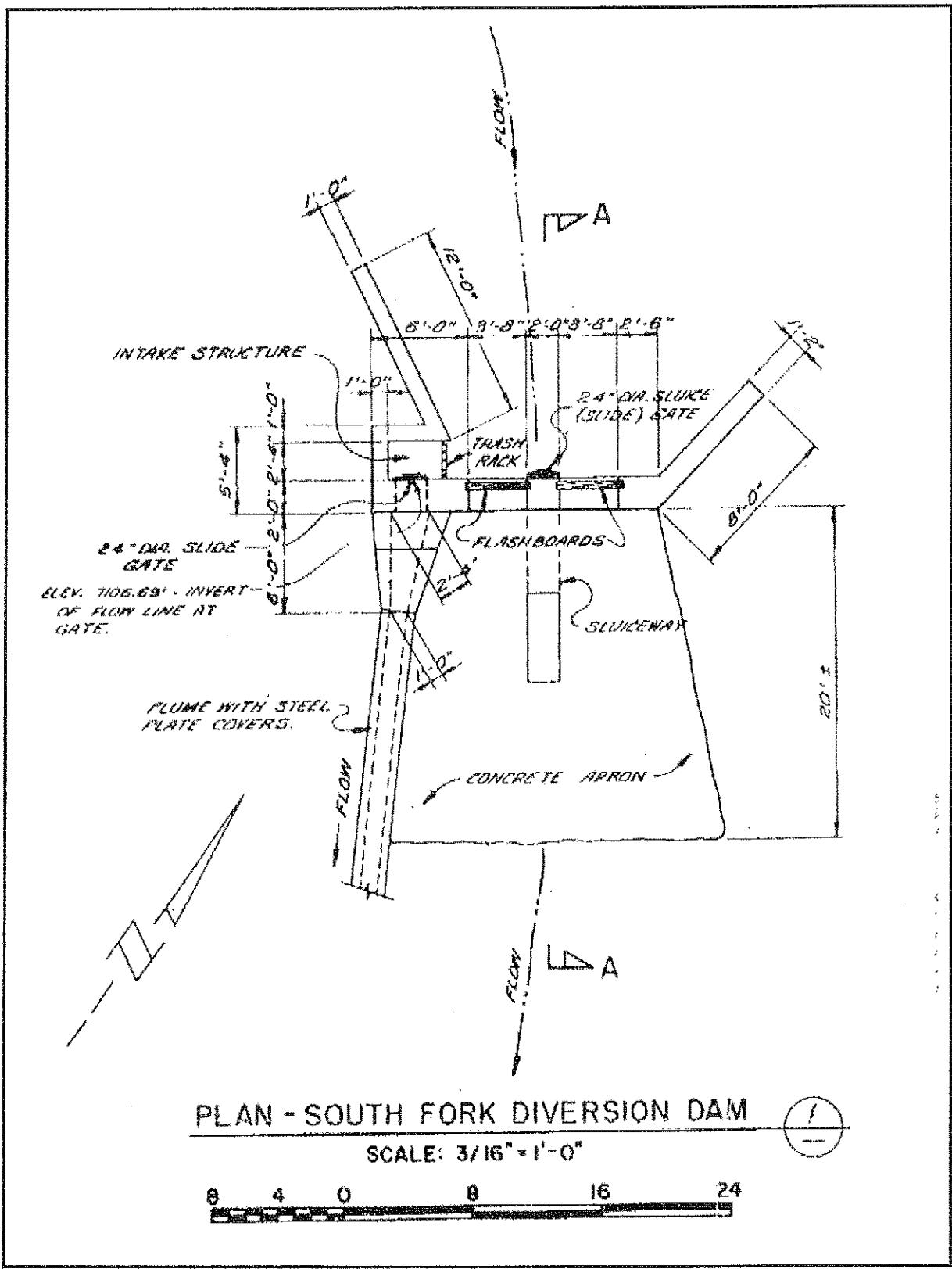


SECTION A-A  
EAST FORK DIVERSION DAM

SCALE 1/8" = 1'-0"

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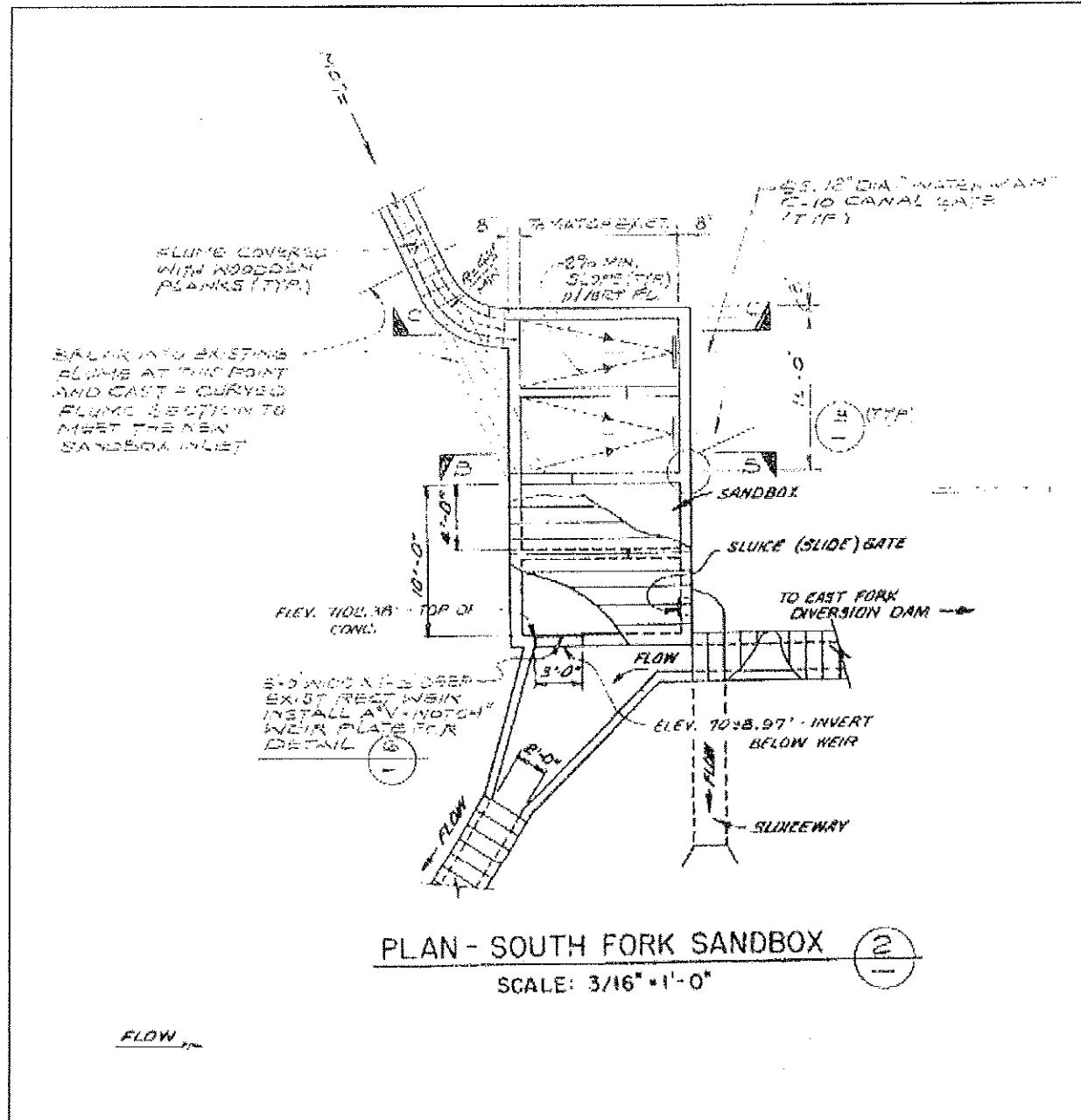


PLAN - SOUTH FORK DIVERSION DAM

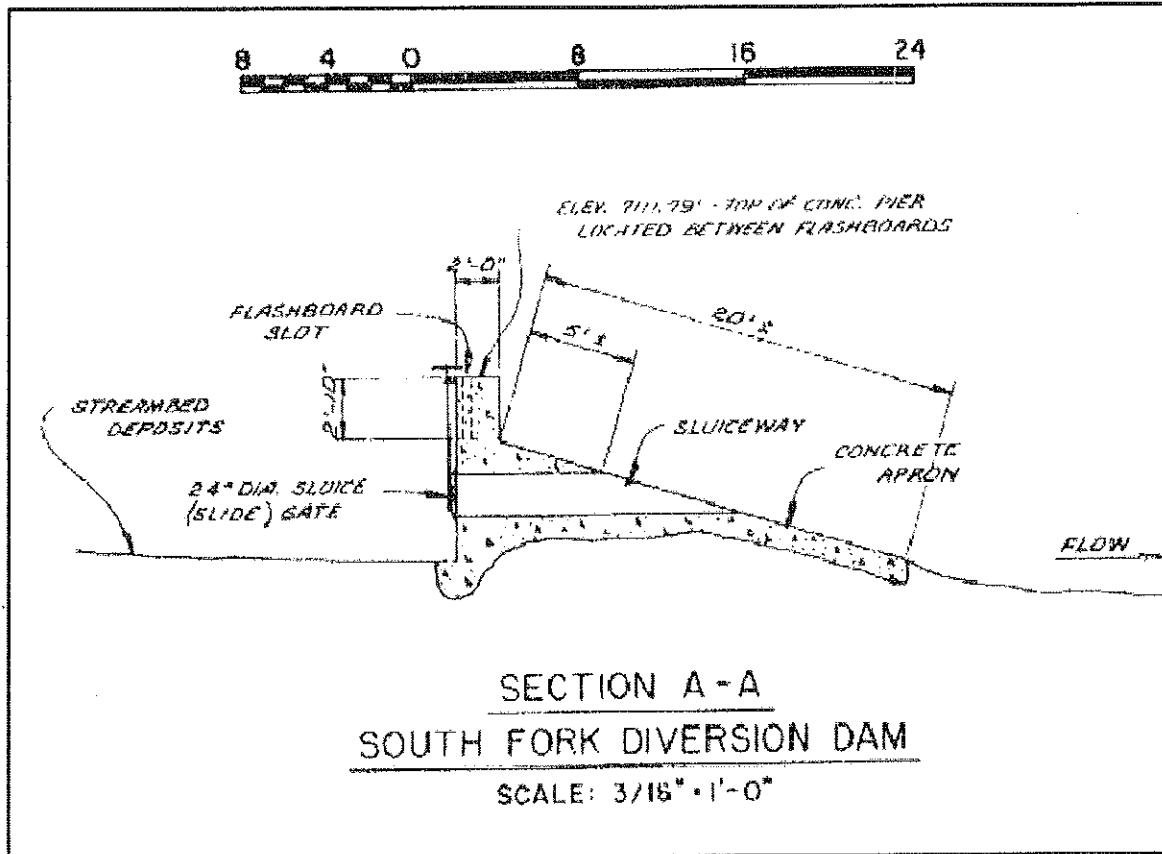
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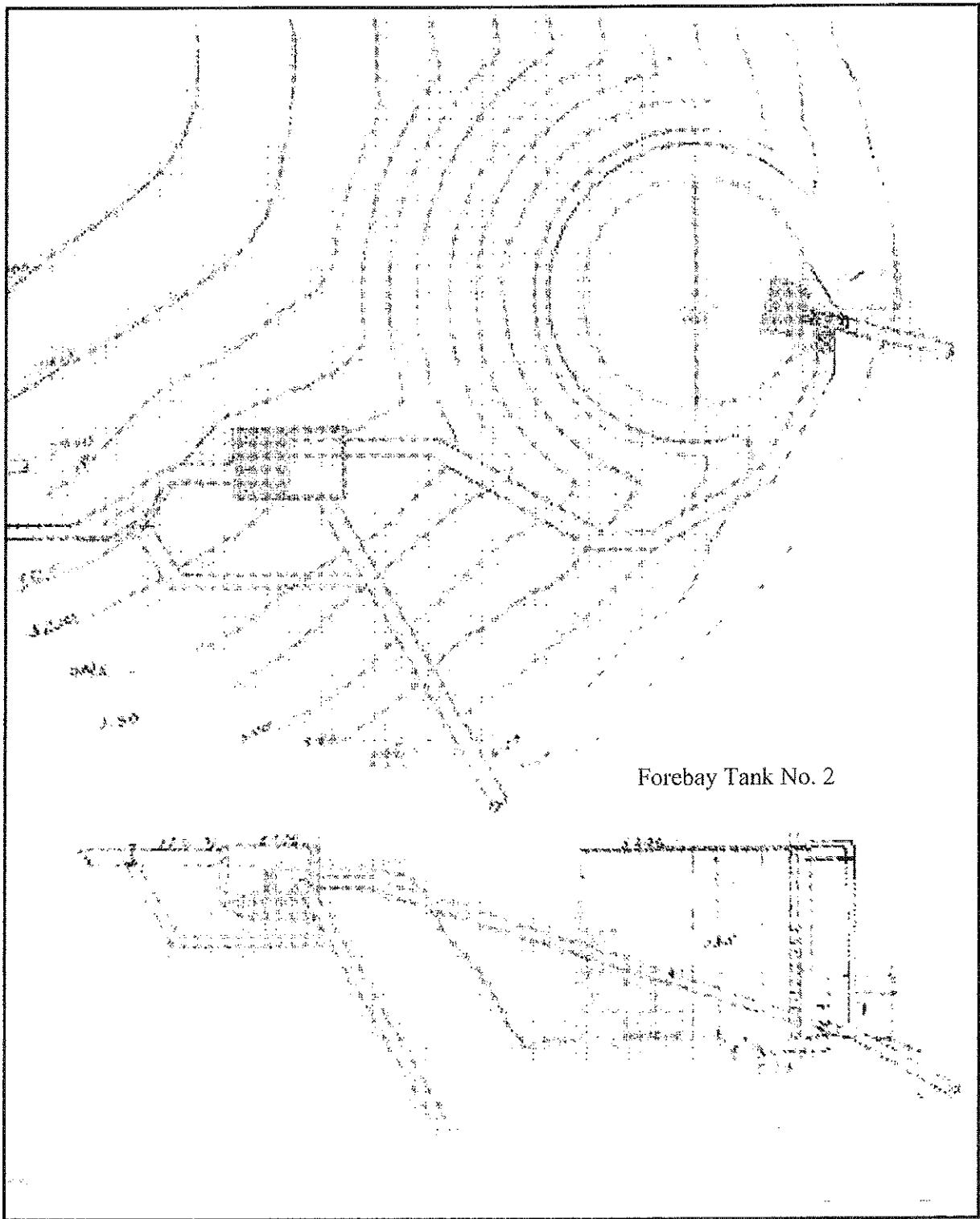
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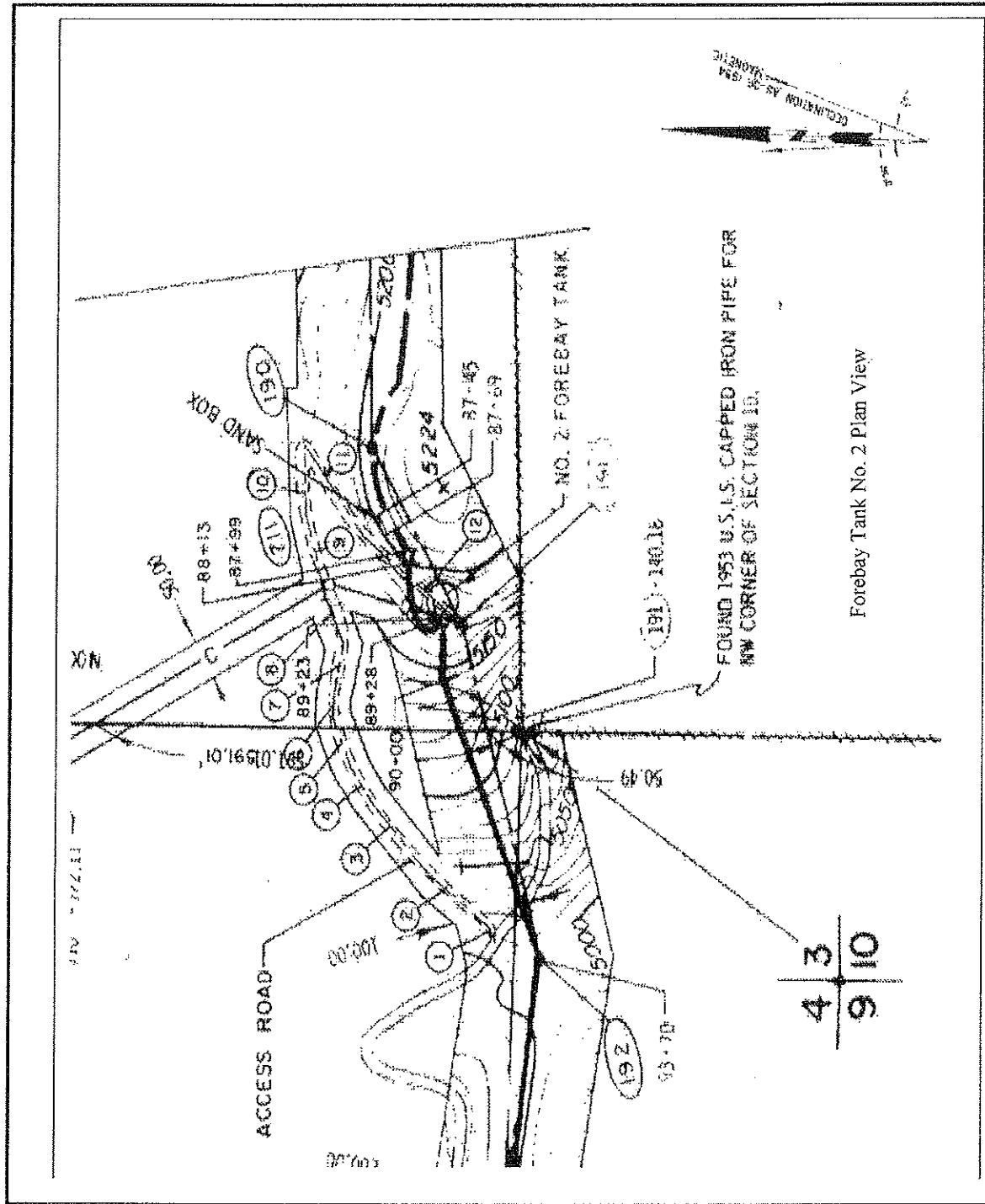


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Forebay Tank No. 2

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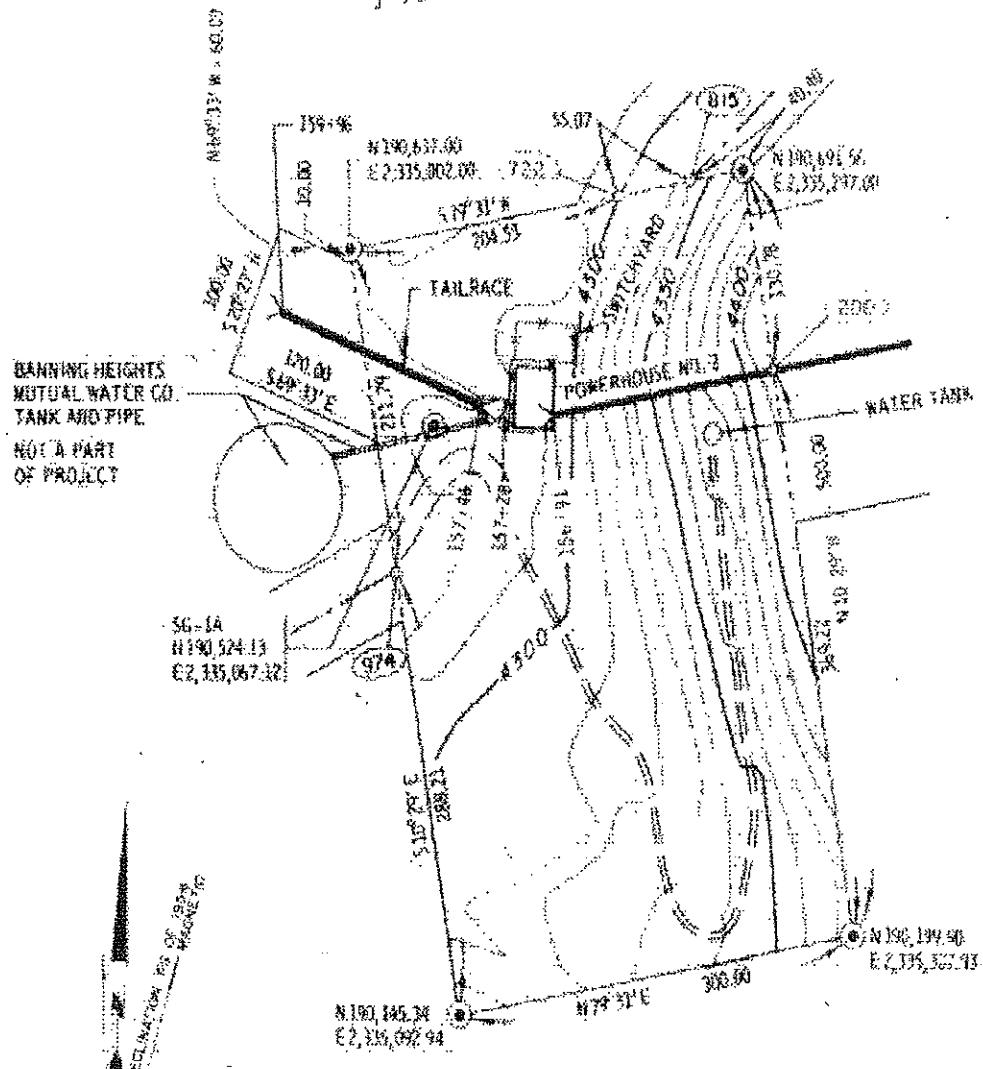
## Forebay Tank No. 2 Plan View

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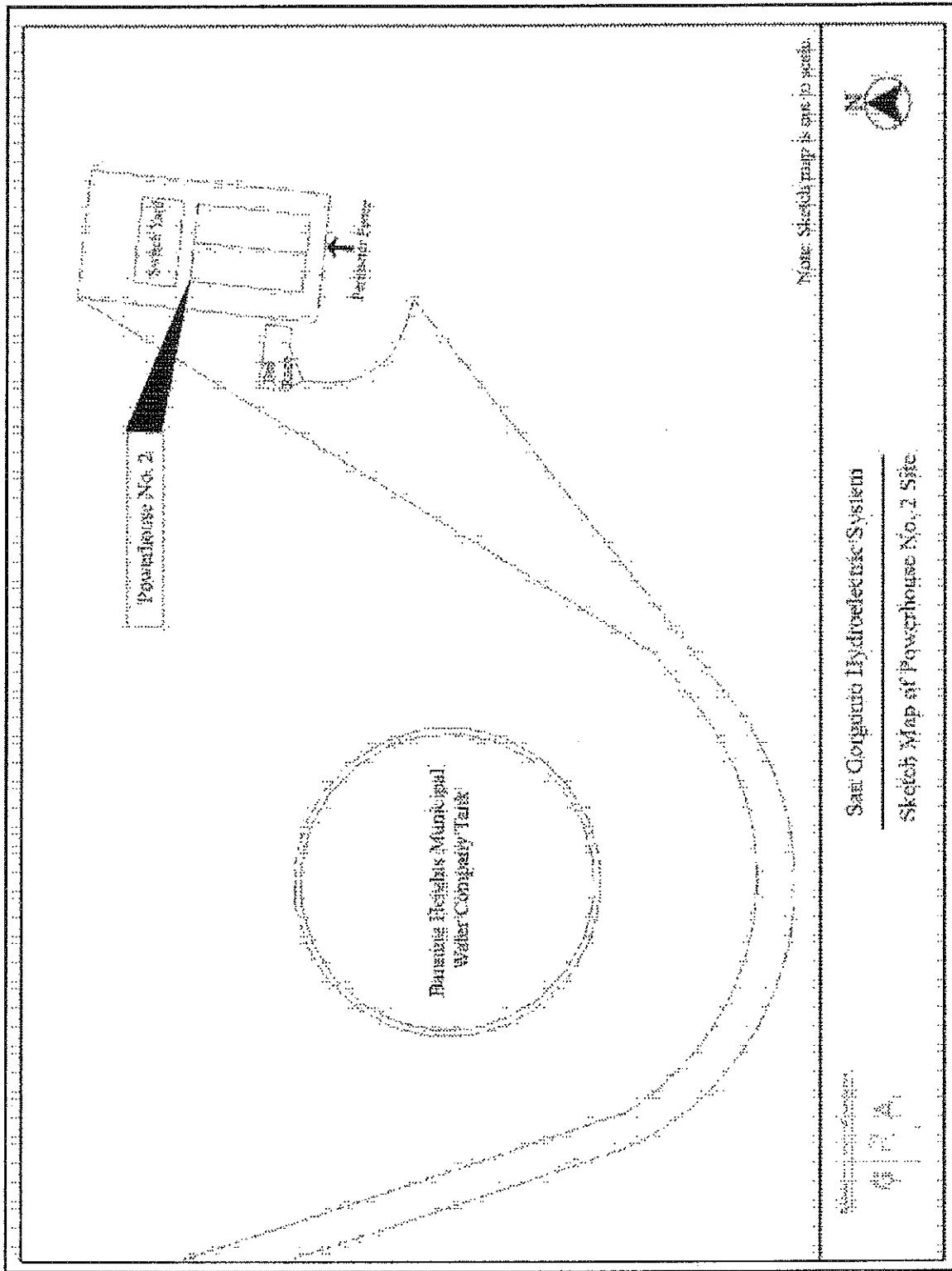
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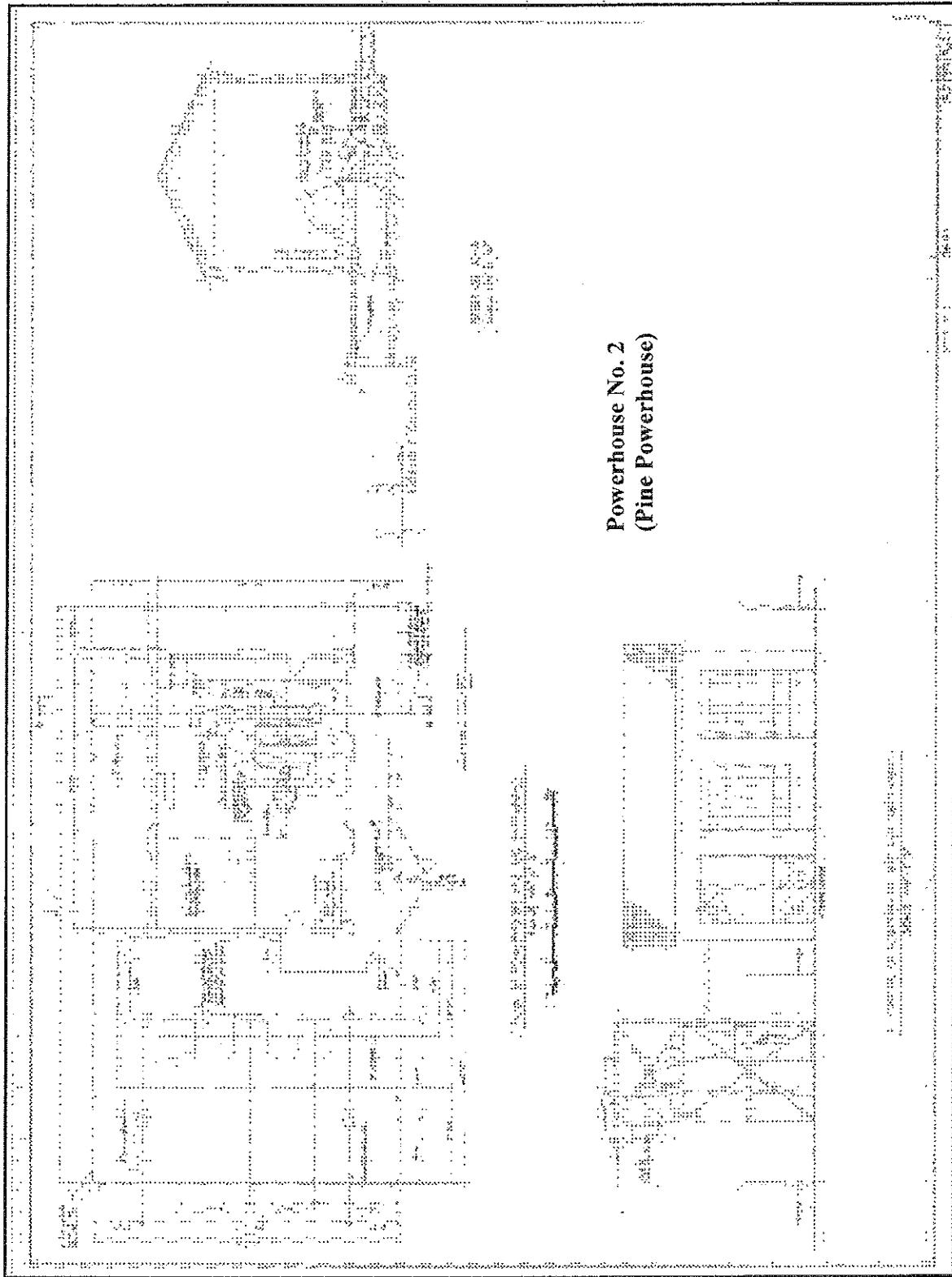
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## Powerhouse No. 2 Plan View (Pine Powerhouse)

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## Powerhouse No. 2 (Pine Powerhouse)

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Attachment A – Dr. Richard Harris Riparian Report 2005

## **Evaluation of Water Diversion Effects on Riparian Vegetation South Fork and East Fork Diversion Dams, San Gorgonio Project**

**Richard R. Harris, Ph.D.  
June 2005**

### **Introduction**

A field study was undertaken at the South and East Forks of the Whitewater River during June 2005. The study was preceded by a reconnaissance survey of the study area in 2003 at which time general observations were recorded. On that basis of that reconnaissance, a field study plan was developed. The objectives of the study plan were:

- To determine riparian vegetation conditions above and below the San Gorgonio Project South Fork and East Fork Diversion Dams.
- To determine if there are significant differences in riparian vegetation and ecological functions above and below the diversions.
- To determine potential causes for vegetation differences including, but not limited to: 1) streamflow diversions; 2) land uses; and/or 3) stream geomorphology.
- On the basis of the findings of this work, to propose mitigation measures to offset existing impacts on riparian vegetation, to restore riparian vegetation and/or to prevent further impacts.

Different approaches were used for the evaluation of the East and South Fork diversion sites. Riparian vegetation is absent on the East Fork of the Whitewater River so quantitative sampling was not possible. The absence of riparian vegetation both above and below the diversion due is to scouring from peak flows, lack of floodplain substrate and channel/side slope instability. As described below in the results, the few patches of vegetation that exist in the vicinity of the East Fork diversion are either recently established or on terraces well above the stream channel. Data collected on the East Fork consisted of field observations and photography.

The South Fork of the Whitewater River is entirely different and it has substantial riparian vegetation. Consequently, a quantitative sampling scheme was implemented in that area.

### **Study Design**

#### ***Field Data Collection***

The sampling approach used at the South Fork was based on the methods in Harris et al. (2005). These methods were developed for planning and monitoring riparian habitat restoration and are highly suitable for studies of diversion effects.

The study area at the South Fork was initially defined as distances equal to 20 bankful channel widths above and below the point of diversion. In executing the study, the actual study areas encompassed stream reaches up to 500 feet above and below the diversion. This was more than twice the distances based on 20 bankful widths. The longer study reaches were used to capture the variability in vegetation and geomorphic conditions. Areas of obvious land use disturbance below the diversion site associated with construction or upstream pool were not sampled. These disturbed areas extended approximately 50-100 feet upstream and downstream of the diversion site. They are described further in the **Discussion** section of this paper. In addition to collecting data on vegetation within the specified study areas, other locations on both the South Fork and East Fork and at their downstream confluence were also visited and observations were recorded.

The study areas were defined in this manner because past studies of streamflow diversion impacts on riparian vegetation have generally indicated that vegetation changes occur immediately downstream from diversions (Harris et al. 1987). Impacts that may occur can include changes in vegetation structure or composition, channel encroachment or reduced vegetation cover (Harris et al. 1987). At the East and South Forks of the Whitewater River, diversions do not significantly affect the timing or magnitude of peak flow events. They do reduce summertime low flows. For example, field observations indicate that when fully operational, the diversion on the South Fork deters the channel approximately 250-300 feet downstream. The responses that may occur due to reduced low flows were predicted to include plant mortality, reduced tree, shrub or herbaceous cover or changes in species composition due to drought stress.

Within the study areas two sampling methods were used. Line intercept transects along banks were used to determine vegetation cover, barren bank and/or other features for the length of the study reaches upstream and downstream from the diversion. Cover was recorded by species for shrubs and herbaceous vegetation since it is these two types of vegetation that have the strongest influence on bank stability. The line intercepts generally followed the "greenline" or bankful channel boundaries. Line intercept transects were also used to sample riparian vegetation on the floodplain perpendicular to the channel. In this case, cover was recorded by species for the tree, shrub and herbaceous layers. These transects were spaced at roughly 100 foot intervals in each reach. The length of floodplain transects was equal to the width of the geomorphic floodplain, as determined from field indicators. The bankful channel width was subtracted from each transect length in calculations of vegetation cover, that is, the vegetation cover values pertain to the area available for persistent riparian vegetation.

In addition to measuring riparian vegetation, other features such as barren ground, rock and woody debris were recorded on the floodplain transects.

Data collection forms and instructions are attached in Appendix A.

To provide further information, photographs were taken to document riparian vegetation conditions.

## **Analysis**

The analysis procedures differed for the East Fork and South Fork Whitewater River study areas. For the East Fork, qualitative analysis was based on observations and photographs of reaches above and below the diversion since the complete absence of riparian vegetation precluded collection of quantitative data. For the South Fork sample data were tabulated for evaluation. For bank transects, the percentage of each bank (both sides of the stream combined) occupied by herbaceous or shrub cover upstream and downstream from the diversion was calculated. Since these diversions mainly affect low flows, bank cover, which may be more dependent on those flows, is an appropriate response variable (Harris et al. 1985).

For floodplain transects, cover in each of three height classes corresponding to tree, shrub and herbaceous layer was tabulated. The calculation for each transect is as follows:

$$\frac{\text{Total length of sampled line with vegetation cover in height class A, B or C}}{\text{Total length of sampled line}} * 100 = \text{Percent vegetation cover on the floodplain in height class A, B or C}$$

Height class A is defined as 0-3 meters; height class B is defined as 3-10 meters and height class C is defined as >10 meters (Harris et al. 2005).

The values for each transect were then averaged to produce average cover values by height class. As a response variable, cover by height class has value for interpreting diversion effects e.g., mortality or encroachment (Harris et al. 1987).

The results of the data analysis were used for three purposes: 1) to evaluate the resource values associated with the riparian vegetation in each reach; 2) to interpret existing and potential future diversion effects; and 3) to consider what mitigation or enhancement measures might be undertaken to either curtail or prevent future impacts.

## **Results**

### ***East Fork Whitewater River***

Conditions above and below the diversion on the East Fork Whitewater River are illustrated by Photographs 1 and 2, respectively.

Photograph 1: East Fork Whitewater River Above East Fork Dam. The channel and floodplain is devoid of riparian vegetation due to effects of scouring flows and channel/bank instability. Vegetation at left of photograph is on a terrace several feet above the channel bottom and consists primarily of upland conifer and shrub species.

The condition of the stream did not change significantly between 2003 when first visited and the time of this study.

Photograph 2: East Fork Whitewater River Downstream From East Fork Dam. Riparian vegetation is generally absent below the diversion except for isolated patches of young alder, as in the lower center of the photograph. This reach too did not change significantly between 2003 and 2005.

Generally, there are no discernible differences in riparian or geomorphic conditions above and below the diversion. The overwhelming influences of steep gradient (8-11 percent), coarse substrate and scouring peak flows prevent establishment and growth of riparian species.

### ***South Fork Whitewater River***

The South Fork Whitewater River in the vicinity of the South Fork Dam has a relatively stable channel with step-pool morphology (especially upstream from the diversion), relatively stable side slopes and abundant riparian vegetation. Photographs 3 and 4 show conditions upstream and Photograph 5 shows conditions downstream from the diversion, respectively.



Photographs 3 and 4: South Fork Whitewater River Above South Fork Dam. The riparian canopy is moderately dense, consisting of white alder with an overstory of mixed conifers. The understory shrub layer is also relatively dense where open canopy permits and consists of golden currant. Herbaceous cover is limited but where present, consists of stinging nettle and sedges. Note bank armoring by large wood and large rock particles.

Photograph 5: South Fork Whitewater River Downstream from South Fork Dam. The reach downstream from the diversion has a flatter gradient and is more depositional than the upstream reach. As evidenced by the photograph, large woody debris promotes sediment storage. The riparian vegetation consists of an open to dense canopy of white alder with an understory of golden currant. The herbaceous layer is sparse, but where present mainly consists of stinging nettle.

Measurements indicated that bank cover varied in relation to the density of overstory canopy. Where open, bank cover was dense and continuous both upstream and downstream from the diversion. In the upstream reach, unvegetated bank was well armored with boulders and large wood. Overall, the upstream reach banks were vegetated for >50 percent of their lengths. In the downstream reach, banks were not as well defined as in the upstream reach. There were more floodplain and sedimentary deposits. Bank cover was generally low due to this factor and where the overstory of

alders was dense. Observations further downstream from the diversion indicated that where banks were well defined and overstory canopy was more open, bank cover was continuous. Generally, vegetation cover occupied about 10 percent of the downstream "banks" within 500 feet downstream from the diversion but 60-80 percent of the banks further downstream.

Vegetation cover data collected with floodplain transects for upstream and downstream reaches of the South Fork Whitewater River are presented in Table 1. Five transects were measured in the downstream reach and six were measured in the upstream reach.

Table 1: Vegetation Cover Data for Upstream and Downstream Reaches of South Fork Whitewater River. Cover data are presented in percent, to the nearest 10 percent. The bankful channel width was subtracted from the total transect length to obtain the total riparian zone width. Cover values are for the riparian zone only. In many instances, canopy overhang on the stream surface was significant.

Upstream				
Transect Number	Height Class A (0-3 meters)	Height Class B (3-10 meters)	Height Class C (>10 meters)	Total Riparian Zone Width (feet)
Transect 1	20	40	0	18
Transect 2	0	40	20	14
Transect 3	0	0	80	10
Transect 4	80	0	0	11
Transect 5	60	20	0	10
Transect 6	20	10	10	16
Average	30	18	18	13
Downstream				
Transect Number	Height Class A (0-3 meters)	Height Class B (3-10 meters)	Height Class C (>10 meters)	Total Riparian Zone Width (feet)
Transect 1	50	20	0	20
Transect 2	40	50	0	18
Transect 3	30	0	70	18
Transect 4	30	0	60	24
Transect 5	30	0	80	24
Average	36	14	42	21

Generally, the species richness of this riparian community was very low. The dominant species in height class A were golden currant and stinging nettle in both reaches. Sedges were present as well in very limited abundance. The dominant species in height class B was white alder in both reaches. For height class C, conifers, primarily incense cedar were dominant in the upstream reach but alders were dominant in the downstream reach. Although large alders were present in the upstream reach, they

were more common downstream. The steeper gradient and narrower floodplain in the upstream reach was conducive to dominance by conifers.

Riparian vegetation is notoriously variable in mountainous regions of California (Harris 1989) and these data exhibit that variability. Nevertheless, some patterns are interpretable. There is a pattern of higher shrub and herbaceous cover when canopy values are relatively low. There is also a difference in the structure of the vegetation above and below the diversion with generally younger or shorter alder above than below. The riparian zone is also wider below the diversion reflecting the more depositional setting there.

## **Discussion**

### **Resource Conditions**

The ecological functions of riparian vegetation in mountainous regions include stream temperature regulation (i.e., shade), provision of nutrients to instream biological communities (through litterfall), provision of large wood that affects channel morphology and fish habitat (LWD recruitment), bank and floodplain stabilization and wildlife habitat. The relative importance of these functions varies with species composition, vegetation structure and riparian habitat area (Risser and Harris 1990).

On the East Fork Whitewater River, the absence of riparian vegetation implies limited resource values. Stream temperature regulation is affected solely by aspect, topography and presence of forest vegetation on adjacent slopes. As indicated by Photographs 1 and 2, the stream channel is extremely exposed and stream temperature is mostly controlled by the volume of flow and air temperature. In a similar vein, the absence of riparian vegetation means that LWD recruitment only occurs when trees enter the stream from adjacent side slopes (mainly through landslides and bank undercutting). LWD was scarce both upstream and downstream from the diversion. Bank and floodplain stabilization and wildlife habitat functions are not significant.

On the South Fork, the conditions both above and below the diversion suggest that some ecological functions are being performed by the riparian vegetation. Stream temperature regulation is linked to tree size and density of overstory canopy. In the reach upstream from the diversion, both alders and conifers on adjacent slopes provide nearly complete canopy closure over the relatively narrow, incised channel. The conifers are not rooted in the riparian zone but they tower over it. Gaps in the riparian canopy are compensated for by the conifers and by topographic shading. In the reach downstream from the diversion, the larger alders are the primary source of shade since the topography is more gentle. Although measurements of effective shade canopy were not made during this study, field observations at mid-day indicated comparable levels of sunlight interception in both the upstream and downstream reaches.

The importance of leaf litter to instream biological communities varies depending on the species of riparian vegetation. Generally, deciduous tree and shrub and herbaceous

litter are most readily used by instream invertebrates (Risser and Harris 1990). Coniferous litter is also important but is less readily decomposed. It is therefore more important as a long term nutrient bank in the stream than as an immediate source of food. There was a larger number of alders in the more depositional downstream reach and consequently there may be a higher level of deciduous leaf input there. Invertebrate sampling (as proposed in other studies for this project) might disclose whether or not there is a significant difference in the instream community.

LWD recruitment is relatively abundant in both the upstream and downstream reaches but the composition of the LWD is different. In the upstream reach, most instream wood is coniferous, derived from adjacent slopes. LWD performs a limited function in channel morphology upstream. The step-pool morphology is largely controlled by the presence of large particles. LWD does exist in and adjacent to the channel and does contribute to both bank stability and fisheries habitat. In the downstream reach, LWD is a much more important element of channel morphology. In this case, the LWD is mostly alder, although some coniferous wood has migrated downstream. There were several debris jams in the downstream reach with associated sediment deposits. These regulate sediment discharge, form surfaces for recruitment of riparian vegetation, and may create scour pools downstream.

As a rule, coniferous LWD is considered superior to hardwood LWD because it tends to have a higher residence time (Lassettre and Harris 2001). That being said, there did not seem to be any serious deficiencies in LWD recruitment either above or below the diversion and the wood that was present did not appear to be depleting at a significant rate.

Floodplain and bank stabilization is enhanced by cover of shrub and herbaceous species, by presence of natural armoring (wood and rock) and by instream features that deflect flow away from deposits and banks or otherwise reduce stream power. In the upstream reach, the step-pool morphology is very effective at dissipating stream power. Exposed banks were generally absent. If bank vegetation was not present due to overstory shade, natural armoring was sufficient to prevent bank retreat. Floodplain deposits were limited and if present, they were generally well-vegetated or armored. In the downstream reach, the gentler gradient, broader floodplain and LWD jams would prevent bank and floodplain erosion except during extreme flood events. No evidence of bank erosion or unstable sediment deposits was noted in either reach. Both reaches are therefore, relatively stable although for somewhat different reasons.

For riparian habitat to function as an independent habitat, it must be of sufficient size to support potential resident species (Risser and Harris 1990). The entire area of the riparian zone both upstream and downstream from the diversion (500 feet up and down) is less than an acre. Consequently, the riparian zone on South Fork Whitewater River functions primarily as a component of habitat providing thermal relief, escape cover and water. The alders may be selectively used by some species for nesting and roosting but the conifers are probably more important to more species for those purposes.

In summary, the ecological functions of the riparian vegetation on the South Fork Whitewater River include stream temperature regulation, leaf litter inputs, LWD recruitment and bank and floodplain stabilization. Although these functions are being performed differently in some respects in the upstream and downstream reaches, neither reach is significantly impaired nor functioning at a level superior to the other. The primary differences between the reaches are due to the composition and structure of the vegetation and the differences in stream geomorphology.

### ***Existing and Potential Future Diversion Effects***

Since the primary effect of the diversions on both streams is to reduce low flows during the summer months, the potential vegetation responses include mortality of trees, shrubs or herbaceous species, reduced vegetation cover in one or more vegetation layers (through foliage losses or mortality) and changes in composition from mesic to xeric species (Harris et al. 1987).

On the East Fork Whitewater River riparian vegetation is almost entirely absent both above and below the diversion dam. This reflects the effects of unstable geomorphology and periodic peak flows that prevent any development of significant riparian cover. Water diversion is not a causal factor; observations outside the study area indicated that this condition persists throughout the East Fork drainage basin and beyond the confluence with the South Fork.

On the South Fork, the primary differences between the riparian vegetation above and below the diversion dam are: 1) increased size and abundance of alder trees below the diversion; 2) reduced cover of bank vegetation below the diversion; and 3) increased width of the riparian zone below the diversion. There was no evidence of significant mortality of tree or shrub species below the diversion nor was there a significant difference in shrub and herbaceous cover on the floodplain. The probable reason for increased size and abundance of alders below the diversion is the wider floodplain and lack of shading by conifers. In general, the riparian vegetation appeared vigorous both above and below the diversion. Analysis therefore focuses on the reduced cover of bank vegetation.

As previously mentioned, cover of bank vegetation in the downstream reach was affected by the lack of bank definition (more gradual floodplain surfaces in a depositional setting) and by the density of overstory canopy. Barren banks existed in the upstream reach where the canopy was closed. A conservative judgment could attribute at least some reductions in bank cover in the downstream reach to the reduced summertime flows since this vegetation tends to be phreatophytic and more dependent on streamflow than vegetation rooted on floodplains (Harris et al. 1985).

Although not directly a diversion effect, as previously mentioned there are areas of disturbance on both the East and South Forks in the vicinity of the diversion dams. On the East Fork, where the dam is substantial, the disturbed area is limited to the diversion pool and immediate construction area. No potential for mitigation exists there.

On the South Fork, the disturbance area includes not only the diversion pool and dam area but an area downstream where the conveyance structure crosses the stream. In that area, there does not appear to have been significant vegetation clearing or land disturbance. To prevent further disturbance, equipment operations and vegetation removal should be prohibited consistent with prudent management.

#### **Literature Cited**

Harris, R.R., Risser, R.J. and Fox, C.A. 1985. A method for evaluating streamflow discharge-plant species occurrence patterns of headwater streams. pp. 87-90. In: Riparian Ecosystems and their Management; Reconciling Conflicting Uses. Proceedings of the First North American Riparian Conference, 16-18 April, 1985, Tucson, AZ. USDA-Forest Service Gen. Tech. Rep. RM-120.

Harris, R.R. 1989. Riparian communities of the Sierra Nevada, CA and their environmental relationships. pp. 393-399. In: Proceedings of the California Riparian Systems Conference: Protection, Management and Restoration for the 1990s. Davis, CA. 22-24 September, 1988. USDA-Forest Service Gen. Tech. Rep. PSW 110.

Harris, R.R., Fox, C.A. and Risser, R.J. 1987. Impacts of hydroelectric development on riparian vegetation in the Sierra Nevada region, California, USA. Environmental Management 11:519-527.

Harris, R.R., S.D. Kocher, J.M. Gerstein and C. Olson. 2005. Monitoring the effectiveness of riparian vegetation restoration. University of California, Center for Forestry, Berkeley, CA. 33 pp.

Lassettre, N.S. and R.R. Harris. 2001. The geomorphic and ecological influence of large woody debris in streams and rivers. Report prepared for the California Department of Forest and Fire Protection, Fire and Resource Assessment Program. California Department of Forestry and Fire Protection, Sacramento, CA. 69pp.

Risser, R.J. and Harris, R.R. 1990. Mitigating impacts to riparian vegetation on western montane streams. Chapter 9 In: J.A. Gore (ed.). Alternatives in regulated flow management. CRC Press, Inc., Boca Raton, FLA.

Attachment B – Dr. Richard Harris Riparian Report 2010

## **EVALUATION OF POTENTIAL EFFECTS ON RIPARIAN VEGETATION SAN GORGONIO PROJECT**

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September 2010

### **INTRODUCTION AND STUDY DESIGN**

Field studies were undertaken at four streams affected by the San Gorgonio project: Black Wheel Creek, Burnt Canyon, the East Fork of South Fork of the Whitewater River (hereafter, East Fork) and the South Fork of the Whitewater River. Initial reconnaissance surveys were conducted in 2003 at which time general observations were recorded. Those were followed by additional studies in 2005 and 2010. In consideration of individual site conditions, different approaches were used for evaluation at each site. At Burnt Canyon, Black Wheel Creek and the East Fork qualitative observations were recorded, including repeated photographs at sequential points in time. At the South Fork, the riparian vegetation above and below the diversion dam was quantitatively sampled.

The overall objective of the study was to provide the information necessary to determine if continuing to operate and maintain the project would lead to losses of existing riparian resources at all four sites. If that was found to be the case, a second objective was to suggest measures that would protect existing resources or mitigate any future losses.

To achieve these objectives, the field studies were designed to:

- Determine riparian vegetation conditions at Burnt Canyon, which is a conduit for diverted flows from Black Wheel Creek and the Whitewater River.
- Determine if existing riparian vegetation conditions on Burnt Canyon are attributable to the augmented flows in the creek.
- Determine riparian vegetation conditions on the streams subject to diversion at the Black Wheel Creek, South Fork and East Fork diversion dams.
- Determine if there were differences in riparian vegetation and ecological functions above and below the diversions.
- Determine potential causes for vegetation differences on diverted streams including, but not limited to: 1) historic streamflow diversions; 2) land uses; and/or 3) stream geomorphology.

At Burnt Canyon, riparian conditions were observed at and downstream from the existing diversion dam and upstream to the point at which flows diverted from the Whitewater River and Black Wheel Creek enter the stream in the vicinity of Raywood Flat. In addition to noting the composition and structure of the riparian vegetation, observations on channel and floodplain morphology and valley walls were recorded. Additional observations were made downstream on the San Gorgonio River floodplain and at Sawmill Creek, which is immediately adjacent to Burnt Canyon, has a similar

intermittent natural flow regime and has not been affected by diversion or augmented flows.

At Black Wheel Creek, riparian conditions were noted at and immediately above and below the point at which the stream is diverted. Additional observations were made upstream and downstream from the diversion. As with Burnt Canyon, the composition and structure of riparian vegetation and stream geomorphology characteristics were noted.

At the East Fork, the same qualitative survey methods were employed. Observations of other investigators at the confluence of the East Fork and main stem South Fork were also noted. Quantitative sampling was not conducted on the East Fork because of the absence of riparian vegetation in 2003-2005 and for other reasons discussed below in the **RESULTS** section of this paper.

Quantitative sampling was conducted at the South Fork in 2005 and 2010. The sampling approach used at the South Fork was based on methods presented in Harris et al. (2005). These methods were developed for planning and monitoring riparian habitat restoration and are highly suitable for studies of diversion effects.

The study area at the South Fork was initially defined as distances equal to 20 bankful channel widths above and below the point of diversion. In executing the study, the actual study areas encompassed stream reaches up to 500 feet above and below the diversion. This was more than twice the distances based on 20 bankful widths. The longer study reaches were used to capture the variability in vegetation and geomorphic conditions. Areas of obvious land use disturbance below the diversion site associated with construction and the pool upstream from the diversion dam were not sampled. These disturbed areas extended approximately 50-100 feet upstream and downstream from the diversion site.

The South Fork study area was defined in this manner because past studies of streamflow diversion impacts on riparian vegetation have generally indicated that vegetation changes occur immediately downstream from diversions on mountain streams (Harris et al. 1987). Impacts that may occur can include changes in vegetation structure or composition, channel encroachment or reduced vegetation cover (Harris et al. 1987). None of the diversions significantly affect the timing or magnitude of peak flow events. They do reduce summertime low flows. The responses that may occur due to reduced low flows are predicted to include plant mortality, reduced tree, shrub or herbaceous cover or changes in species composition due to drought stress.

Two sampling methods were used at the South Fork. In 2005, line intercept transects along banks were used to determine vegetation cover, barren bank and/or other features for the length of the study reaches upstream and downstream from the diversion. Cover was recorded by species for shrubs and herbaceous vegetation since it is these two types of vegetation that have the strongest influence on bank stability. The line intercepts generally followed the "greenline" or bankful channel boundaries. In both

2005 and 2010, line intercept transects were also used to sample riparian vegetation on the floodplain perpendicular to the channel. In this case, cover was recorded by species for the tree, shrub and herbaceous layers. These transects were spaced at 50-100 foot intervals in each reach. The length of these transects was equal to the width of the geomorphic floodplain, as determined from field indicators.

In addition to measuring riparian vegetation, other features such as barren ground, rock and woody debris were recorded on the floodplain transects.

## ANALYSIS

For the streams that were qualitatively evaluated, analysis included comparison of observations recorded during sequential study dates and interpretation of vegetation-geomorphology-streamflow relationships based on best professional judgment. All of the streams evaluated in this study are subject to extreme flooding events associated with intense thunderstorms and/or rain-on-snow runoff. Consequently, scouring, aggradation, incision and channel changes periodically affect them all. These geomorphic events exert a major influence on the conditions of riparian vegetation at any point in time (Bendix 1999; Bendix and Hupp 2000). Peak flows have occurred several times in the past decade, most recently in 2004-2005 and 2007. Riparian vegetation reflects the effects of these flows on all of the streams except Black Wheel Creek probably because it has a relatively small watershed and may not have experienced extreme flows in 2007.

For the South Fork sample data were tabulated for evaluation. For bank transects, the percentage of each bank (both sides of the stream combined) occupied by herbaceous or shrub cover upstream and downstream from the diversion was calculated. Since these diversions mainly affect low flows, bank cover, which may be more dependent on those flows, is an appropriate response variable (Harris et al. 1985).

For floodplain transects, cover in each of three height classes corresponding to the tree, shrub and herbaceous layers was tabulated. The calculation for each transect is as follows:

*Total length of sampled line with vegetation cover in height class A, B or C/Total length of sampled line \* 100 = Percent vegetation cover on the floodplain in height class A, B or C*

Height class A is defined as 0-3 meters; height class B is defined as 3-10 meters and height class C is defined as >10 meters (Harris et al. 2005).

The values for each transect were then averaged to produce average cover values by height class. As a response variable, cover by height class has value for interpreting diversion effects e.g., mortality or encroachment (Harris et al. 1987).

Data collected in 2005 and 2010 were compared to determine if changes had occurred over that period. The results of the data analysis were used for three purposes: 1) to evaluate the resource values associated with the riparian vegetation in each reach; 2) to interpret potential future diversion effects; and 3) to consider what protective or mitigation measures might be undertaken to prevent future impacts.

## RESULTS

### Black Wheel Creek

Black Wheel Creek is an ephemeral or intermittent stream that is apparently spring-fed. At the time of field surveys, streamflow was entirely diverted and the downstream channel was dry. In the stream reach above the diversion, surface flow was present at all survey dates and there was wetland vegetation consisting of rushes, sedges and horsetail along with a scattering on alder and oak trees. Below the diversion, there was no riparian vegetation present (Figure 1, Appendix A).

### Burnt Canyon

Burnt Canyon is an intermittent tributary to the San Gorgonio River. For the past several years, streamflow that is diverted from Black Wheel Creek and the Whitewater River has been conveyed by canal and pipeline to a point at which it is released into Burnt Canyon. The diverted water then flows downstream to a diversion dam on Burnt Canyon where it enters a pipeline that conveys it back to the project canal. Below the diversion dam, Burnt Canyon and the adjacent Sawmill Creek have their confluence and enter the San Gorgonio River alluvial floodplain. They have no direct connection to the San Gorgonio River. During field work in 2003 and 2005, no streamflow was observed below the diversion dam. In 2010, flow was temporarily present because the diversion intake was clogged with debris. After the debris was cleared, the flow ceased (Figure 2a, Appendix A).

Above the diversion dam, Burnt Canyon has a generally steep gradient with some flatter depositional areas, relatively narrow floodplain and extremely unstable valley walls (Figure 2b, Appendix A). Conditions indicate that it periodically experiences large damaging flows carrying large amounts of coarse sediment and debris. A flow of this nature destroyed the diversion dam on Burnt Canyon in 2004-2005. The dam was rebuilt in 2005. Another peak flow event occurred in 2007.

Alder dominates the riparian vegetation along Burnt Canyon above the diversion dam. Associated plant species include willow, coffeeberry, red-flowering currant, mulefat and sedges. Big cone Douglas-fir, coulter pine and oaks are present on side-slopes. The presence of scattered large alders indicates that riparian vegetation existed prior to the diversion of streamflow into the creek (Figure 3a, Appendix A). Since the initiation of the diversion, there has been a burst of alder recruitment that has created a much denser riparian community (Figure 3b, Appendix A). Canopy cover ranged from 50-80 percent in 2010 and was probably half that before flows were augmented.

There is no riparian vegetation present in Burnt Canyon below the dam. The nearest riparian vegetation is associated with the San Gregorio River several hundred yards down the valley from the Burnt Canyon/Sawmill Creek confluence.

Riparian vegetation along Burnt Canyon above the dam is subject to destruction during peak flows. Destruction can occur due to scouring, uprooting or through aggradation that impairs root respiration. The alder at Burnt Canyon and elsewhere in the project area is also susceptible to defoliation by the alder flea beetle. The beetle was especially active in 2010, completely defoliating most of the young alder (Figure 3b, Appendix A). The flea beetle does not normally kill alders but if defoliation occurs over several seasons, mortality may result.

### **East Fork**

Figures 4 and 5, respectively in Appendix A, illustrate riparian and geomorphic conditions above and below the diversion on the East Fork as of 2005 and 2010.

In the upstream reach, as of summer 2005, the channel and floodplain was devoid of riparian vegetation due to effects of scouring flows in the winter of 2004-2005 and resultant channel/bank instability. Vegetation that existed was on a terrace several feet above the channel bottom and consisted primarily of upland conifer and shrub species. As of 2010, conditions had changed. The channel was more confined due to sediment deposition and riparian vegetation consisting of alders had colonized the floodplain. Geomorphic changes are attributable to peak flows that occurred in 2007. The size of the alder recruitment indicates establishment between 2007 and 2010. There were no scouring flows during that interval.

In the downstream reach, as of 2005 riparian vegetation was generally absent below the diversion except for isolated patches of young alder. Because of impaired access due to slope instability it was not possible to exactly replicate the 2005 photo-point in 2010 but the comparison photograph represents the downstream conditions well (see Figure 5, Appendix A). Peak flows in 2007 caused changes in valley wall topography and stream channel morphology. As with the upstream reach, young alders colonized floodplain deposits between 2007 and 2010.

The riparian conditions on the East Fork reflect the nature of this stream system and the overwhelming influences of steep gradient (8-11 percent), coarse substrate and scouring peak flows. In 2005, vegetation was absent because of recent peak flows. In 2010, vegetation was present and will remain as long as there are no scouring flows. If there is a sufficient time between peak flows for the alders to attain sizes that can resist the effects of peak flows, eventually a more developed riparian corridor may evolve.

## South Fork

Figures 5 and 6, respectively in Appendix A illustrate the conditions on the South Fork upstream and downstream from the diversion in 2005 versus 2010.

As of 2005, the upstream reach exhibited a relatively stable channel with step-pool morphology, relatively stable side slopes and abundant riparian vegetation. In 2010, there was evidence of the 2007 flood including debris jams, sedimentation and some bank erosion where a few streamside trees had been undermined. At both times, the riparian canopy was moderately dense, consisting of some white alder and mixed conifers. The under-story was also relatively dense where the over-story canopy was open. Under-story cover consisted of some alder saplings, golden current, stinging nettle, penstemon, other unidentifiable herbaceous species and sedges.

The reach downstream from the diversion has a flatter gradient, wider valley floor and is more depositional than the upstream reach. Photographs taken in both 2005 and 2010 illustrate the presence of large accumulations of woody debris that promotes sediment storage. During both times, the riparian vegetation consisted of an open to dense canopy of white alder with an under-story of golden currant and stinging nettle.

Measurements taken in 2005 and confirmed through observation in 2010 indicated that bank cover varied in relation to the density of over-story canopy. Where open, bank cover was dense and continuous both upstream and downstream from the diversion. In the upstream reach, un-vegetated bank was well armored with boulders and large wood. Overall, in both 2005 and 2010 the upstream reach banks were vegetated for >50 percent of their lengths. In the downstream reach, banks were not as well defined as in the upstream reach. There were more sedimentary deposits. Bank cover was generally lower due to this factor and because the over-story of alders was dense. Observations further downstream from the diversion indicated that where banks were well defined and over-story canopy was more open, bank cover was continuous. Generally, vegetation cover occupied about 10 percent of the downstream "banks" within 500 feet downstream from the diversion but 60-80 percent of the banks further downstream in both 2005 and 2010. Bank erosion was not evident in the downstream reach.

Vegetation cover data collected with floodplain transects for upstream and downstream reaches of the South Fork Whitewater River are presented in Table 1. In 2005, five transects were measured in the downstream reach and six were measured in the upstream reach. In 2010, six transects were measured in the downstream reach and seven were measured in the upstream reach. Identical transect locations were not sampled in each year but the transects were comparable and representative of the conditions in each reach.

Table 1: Vegetation Cover Data for Upstream and Downstream Reaches of South Fork Whitewater River, 2005/2010. Cover data are presented in percent, to the nearest 10 percent. The total riparian zone width represents the total floodplain width including the bankful channel. In some cases, canopy was completely closed over the channel.

Upstream				
Transect Number	Height Class A (0-3 meters)	Height Class B (3-10 meters)	Height Class C (>10 meters)	Total Riparian Zone Width (feet)
Transect 1	20/50	40/0	0/50	18/23
Transect 2	0/30	40/50	20/50	14/15
Transect 3	0/60	0/0	80/20	10/11
Transect 4	80/70	0/30	0/80	11/15
Transect 5	60/100	20/10	0/0	10/13
Transect 6	20/0	10/0	10/70	16/13
Transect 7	40	0	100	19
Average	30/50	20/10	20/50	13/16
Downstream				
Transect Number	Height Class A (0-3 meters)	Height Class B (3-10 meters)	Height Class C (>10 meters)	Total Riparian Zone Width (feet)
Transect 1	50/0	20/0	0/0	20/15
Transect 2	40/30	50/20	0/100	18/13
Transect 3	30/20	0/70	70/70	18/18
Transect 4	30/10	0/0	60/100	24/12
Transect 5	30/30	0/0	80/100	24/12
Transect 6	40	0	100	22
Average	40/20	10/20	40/80	21/15

The sample data reflect the variability of riparian vegetation that is typical of mountainous streams (Harris et al. 1987; Harris 1989; Bendix 1999) and confirmed the general observations described above. In both reaches in both years, cover in Height Class A (herbaceous species and shrubs) tended to be lower when tree canopy cover values were high. The difference in overall riparian zone width in 2005 versus 2010 in the downstream reach appeared to be due to incision that occurred during or after the 2007 flood, especially below debris jams. The composition of the community in both reaches was the same in both sample years. The dominant species in Height Class A were golden currant and stinging nettle in both reaches. Sedges were present as well in very limited abundance. The dominant species in Height Class B was white alder in both reaches. For Height Class C, conifers, primarily incense cedar were dominant in the upstream reach but alders were dominant in the downstream reach. Although large alders were present in the upstream reach, they were more common downstream. This is attributable to the wider valley floor that is favorable for the relatively shade-intolerant alder.

## DISCUSSION

### Resource Values

The ecological functions of riparian vegetation in mountainous regions include:

- Stream temperature regulation (i.e., shade)
- Provision of nutrients to instream biological communities (through litterfall)
- Provision of large wood that affects channel morphology (LWD recruitment) and in the case of the South Fork where fish are present, fish habitat
- Bank and floodplain stabilization
- Wildlife habitat

The relative importance of these functions varies with species composition, vegetation structure and riparian habitat area (Risser and Harris 1990).

### Black Wheel Creek

Resource values at Black Wheel Creek are relatively limited even above the diversion where wetland and riparian plants are present. Limitations are due to the small area of riparian vegetation and the small size of the stream.

Riparian resources are absent vegetation downstream from the diversion on Black Wheel Creek. At the times of field studies in 2003, 2005 and 2010 there was no surface flow below the diversion.

### Burnt Canyon

Past studies have evaluated the habitat values associated with Burnt Canyon (Stevens 2002). In general, the riparian corridor and floodplain above the diversion dam may provide suitable habitat for a number of aquatic and semi-aquatic species. No fish have been observed in the stream but abundant macroinvertebrates are present. The riparian vegetation is relatively continuous along the stream in reaches that have gentle gradient. On steeper, bedrock sections, conifers on adjacent side slopes and topography provide some cover and shade. Deciduous and coniferous tree litter and litter from herbaceous and shrub species is a source of food for insects and aquatic organisms. Riparian vegetation and trees on side slopes are sources of large woody debris. Several instances of sediment storage behind woody debris jams were observed during field studies.

Resource values at Burnt Canyon have obviously been enhanced by the diversion of water into the stream over the past several years. Riparian vegetation has increased, it is likely that populations of aquatic organisms have increased and there has been an incremental improvement in wildlife habitat. In the long term, the Burnt Canyon system, like most of the streams in its general vicinity is subject to periodic extreme flow events

that can destroy much of the riparian vegetation and re-structure channels. It should be noted however, that the riparian vegetation in Burnt Canyon sustained relatively limited damage during the most recent flood in 2007. Over time, as individual trees have become larger and the vegetation has become more dense, the riparian corridor has developed some resistance to damaging flows. Also, as evidenced by the abundant young alders, it is capable of rapid regeneration after disturbance under the current flow regime.

### **East Fork**

On the East Fork, riparian vegetation is transient, apparently existing only between peak flood events. In 2003 and 2005 riparian vegetation was almost entirely absent. In 2010, some alders had established both up and downstream from the diversion in the interval between peak flows in 2007 and 2010. There were no mature alders present. The transitory nature of riparian vegetation and the limited amount of it even when present implies limited resource values. As indicated by the photographs taken in 2005 and 2010 (Figures 4 and 5, Appendix A), the stream channel is extremely exposed and stream temperature is mostly controlled by the volume of flow and air temperature. Aspect, topography and the presence of forest vegetation on adjacent slopes exert some influence over stream temperature. In a similar vein, the absence of riparian vegetation means that LWD recruitment only occurs when trees enter the stream from adjacent side slopes (mainly through landslides and bank undercutting). LWD was scarce both upstream and downstream from the diversion. Bank and floodplain stabilization and wildlife habitat functions are not significant.

### **South Fork**

On the South Fork, the conditions both above and below the diversion suggest that the riparian vegetation is performing important ecological functions. Stream temperature regulation is linked to tree size and density of over-story canopy. In the reach upstream from the diversion, both alders and conifers on adjacent slopes outside of the immediate floodplain provide nearly complete shade over the relatively narrow, incised channel. Gaps in the riparian canopy are compensated for by the conifers and by topographic shading. In the reach downstream from the diversion, the larger alders are the primary source of shade since the topography is gentler. Although measurements of effective shade canopy were not made during this study, field observations at mid-day indicated comparable levels of sunlight interception in both the upstream and downstream reaches.

The importance of leaf litter to instream biological communities varies depending on the species of riparian vegetation. Generally, deciduous tree and shrub and herbaceous litter are most readily used by instream invertebrates (Risser and Harris 1990). Coniferous litter is also important but is less readily decomposed. It is therefore more important as a long-term nutrient bank in the stream than as an immediate source of food. There were more alders in the depositional downstream reach and consequently

there may be a higher level of deciduous leaf input there. Herbaceous vegetation was relatively abundant in both reaches.

LWD presence and recruitment are abundant in both the upstream and downstream reaches but the composition of the LWD is different. In the upstream reach, most instream wood is coniferous, derived from adjacent slopes. Downstream the LWD is mostly alder although some coniferous wood has migrated there. As a rule, coniferous LWD is considered superior to hardwood LWD because it tends to have a longer residence time (Lassettre and Harris 2001). LWD and large particles create the step-pool morphology in the upstream reach and also armor banks and contribute to their stability. In the downstream reach, LWD is also an important element of channel morphology. It creates debris jams that store sediment and contribute to instream habitat complexity. At all dates of field study, there were several debris jams in the downstream reach with associated sediment deposits. These regulate sediment discharge, form surfaces for recruitment of riparian vegetation and may create pools that serve as fish habitat.

Floodplain and bank stabilization are enhanced by shrub and herbaceous cover, presence of natural armoring (wood and rock) and by instream features that deflect flow away from deposits and banks or otherwise reduce stream power. In the upstream reach, the step-pool morphology is very effective at dissipating stream power. Exposed banks were generally absent, being either vegetated or naturally armored except where trees had been undermined by recent floods. Floodplain deposits were limited and if present, they were generally well-vegetated or armored. In the downstream reach, the gentler gradient, broader floodplain and LWD jams prevent bank and floodplain erosion except during extreme flood events. No evidence of serious bank erosion or unstable sediment deposits was noted in either reach. Both reaches are therefore, relatively stable although for somewhat different reasons.

For riparian habitat to function as an independent habitat, it must be of sufficient size to support potential resident species (Risser and Harris 1990). The entire area of the riparian zone both upstream and downstream from the diversion (500 feet up and down) is less than an acre. Consequently, the riparian zone on the South Fork functions primarily as a component of habitat; providing thermal relief, escape cover and water. The alders may be selectively used by some species for nesting and roosting but the conifers are probably more important to more species for those purposes.

In summary, the ecological functions of the riparian vegetation on the South Fork include stream temperature regulation, leaf litter inputs, LWD recruitment and bank and floodplain stabilization. Although these functions are being performed differently in some respects in the upstream and downstream reaches, neither reach is significantly impaired or functioning at a level superior to the other. The primary differences between the reaches are due to the differences in stream geomorphology.

## **Potential Project Effects**

In this section, the effects of the project, including future streamflow diversions, operations and maintenance are described.

### **Black Wheel Creek**

Black Wheel Creek downstream from the point at which it is diverted was a dry streambed at all times of observation. It had no riparian vegetation. On an ephemeral or intermittent stream at its altitude a riparian community dominated by alders might be expected. No signs of dead alders were noted downstream from the diversion, but if alders did exist prior to diversion, the evidence would be long gone since the diversion has been in place for at least 80 years. The extent of loss if any, cannot be determined.

Since the Black Wheel Creek diversion does not affect peak flows, it has no impact on sediment transport or channel forming streamflow events.

Continued diversion will not affect the upstream riparian community. Other project operations such as maintenance at the diversion would not affect the riparian vegetation unless for some reason maintenance activities occurred upstream. Mitigation measures to offset any potential impacts of this nature are proposed in the next section of this report.

### **Burnt Canyon**

There are two diversion-related potential effects to evaluate at Burnt Canyon: the effects of the project on downstream resources and the effects of flow augmentation on resources upstream from the dam.

There is no riparian vegetation directly downstream from the dam. Riparian vegetation on the San Gregorio River is not hydraulically related to Burnt Canyon. Consequently, the project can have no downstream impacts.

The effects of the flow augmentation in Burnt Canyon on riparian resources have been positive to the extent that riparian cover and regeneration have increased since 2003. Increased riparian vegetation in turn, has led to increased habitat values. Continuing the project will not have adverse effects on riparian vegetation. Conversely, if flow augmentation were terminated, it could lead to losses of riparian vegetation or at least impairment of regeneration. The presence of alders that pre-date the diversion of flow into Burnt Canyon indicates that at least some riparian vegetation would persist if the augmentation were terminated.

### **East and South Forks**

The primary effect of the diversions on both of these streams is to reduce low flows during the summer months. The potential vegetation responses to this type of diversion

include mortality of trees, shrubs or herbaceous species, reduced vegetation cover in one or more vegetation layers (through foliage losses or mortality) and changes in composition from mesic to xeric species (Harris et al. 1987). None of these impacts were observed at either stream below the diversions.

On the East Fork riparian vegetation is intermittently present both above and below the diversion dam. This reflects the effects of unstable geomorphology and periodic peak flows that prevent development of permanent riparian cover. The diversion is not a causal factor; observations outside the study area indicated that this riparian condition persists throughout the East Fork drainage basin and beyond the confluence with the South Fork.

At the present time, leakage below the dam on the East Fork sustains surface flows. This was evident in 2003, 2005 and in late August 2010. It is likely that these flows currently encourage alder regeneration. If the project involved fixing leaks and curtailing these flows, there could be negative effects on regeneration. However, the potential for persistence of riparian vegetation either above or below the dam on the East Fork depends on the frequency and intensity of naturally occurring peak flows. Absence of large alders either above or below the diversion dam is evidence of this. The project has no control over or effect on these flows.

On the South Fork, the primary difference between the riparian vegetation above and below the diversion dam was increased size and abundance of alder trees below the diversion. The probable reason for increased size and abundance of alders below the diversion is the wider valley floor and lack of shading by side slope conifers. There was no evidence of significant mortality of tree or shrub species below the diversion. Differences in cover by height class and riparian zone width above and below the diversion and differences among sampled transects were indicative of the inherent variability in riparian vegetation and geomorphology on mountain streams rather than any diversion effect. In general, the riparian vegetation appeared vigorous both above and below the diversion.

Although not directly a diversion effect, as previously mentioned there were areas of disturbance on both the East and South Forks in the vicinity of the diversion dams. On the East Fork, the disturbed area is limited to the diversion pool and immediate construction area. No evidence of disturbance due to maintenance or construction was observed in the stream. On the South Fork, the disturbance area includes not only the diversion pool and dam area but also an area downstream where the conveyance structure (pipeline) crosses the stream. As noted in the next section, to prevent further disturbance, equipment operations, sediment disposal and vegetation removal should be restricted consistent with prudent management.

As with the East Fork, the diversion dam on the South Fork is leaky and some flow passes downstream. Although not substantial, it is likely that this de facto release has beneficial effects on downstream riparian vegetation. If the project involved curtailing the release by fixing the leak there could be adverse impacts, particularly on

phreatophytic herbaceous species such as sedges that may depend on it in late summer. Conversely, allowing the leakage to continue or instituting instream flow releases would protect these species.

### **Protection and Mitigation Measures**

#### **Black Wheel Creek**

Project operations will not impact existing riparian resources on Black Wheel Creek if the following measures are instituted:

- Restrict any future maintenance or construction activities to areas outside of the channel and riparian vegetation upstream from the diversion.
- In the event that project operators ever seek to prevent debris from upstream entering the diversion structure, installing a trash rack at the point of diversion would be preferable to channel clearing above the diversion.

#### **Burnt Canyon**

With the exception of restricting future maintenance or construction activities within the channel or riparian corridor, the project does not require any protection or mitigation measures. Augmenting flow in the stream has had a positive effect on riparian resources. Since the diversions on the East and South Forks do not appear to have impacts on riparian vegetation there, the benefits in Burnt Canyon are not at the expense of riparian impacts elsewhere.

#### **East Fork and South Fork**

At the East Fork and South Fork allowing the leakage from the dams to persist would prevent project-related impacts on downstream riparian vegetation. On the East Fork, whether or not riparian vegetation will persist depends on the frequency and magnitude of future peak flow events.

Additional measures to protect riparian vegetation include:

- At either location, restricting construction and maintenance activities to areas outside of the undisturbed channels and riparian vegetation.
- At either location, prohibiting channel clearing to remove debris and sediment upstream of the diversion dams. Limiting debris and sediment clearing to the diversion pools.
- At the South Fork, restricting maintenance and construction activities in the reach downstream from the dam to areas outside of the channel and riparian corridor.

## LITERATURE CITED

Bendix, J. 1999. *Stream power influence on southern California riparian vegetation*. Journal of Vegetation Science 10: 243-253.

Bendix, J. and C.R. Hupp. 2000. *Hydrological and geomorphological impacts on riparian plant communities*. Hydrological Processes 14:2977-2990.

Harris, R.R., Risser, R.J. and Fox, C.A. 1985. *A method for evaluating streamflow discharge-plant species occurrence patterns of headwater streams*. pp. 87-90. In: Riparian Ecosystems and their Management; Reconciling Conflicting Uses. Proceedings of the First North American Riparian Conference, 16-18 April, 1985, Tucson, AZ. USDA-Forest Service Gen. Tech. Rep. RM-120.

Harris, R.R. 1989. *Riparian communities of the Sierra Nevada, CA and their environmental relationships*. pp. 393-399. In: Proceedings of the California Riparian Systems Conference: Protection, Management and Restoration for the 1990s. Davis, CA. 22-24 September, 1988. USDA-Forest Service Gen. Tech. Rep. PSW 110.

Harris, R.R., Fox, C.A. and Risser, R.J. 1987. *Impacts of hydroelectric development on riparian vegetation in the Sierra Nevada region, California, USA*. Environmental Management 11:519-527.

Harris, R.R., S.D. Kocher, J.M. Gerstein and C. Olson. 2005. *Monitoring the effectiveness of riparian vegetation restoration*. University of California, Center for Forestry, Berkeley, CA. 33 pp.

Lassettre, N.S. and R.R. Harris. 2001. *The geomorphic and ecological influence of large woody debris in streams and rivers*. Report prepared for the California Department of Forest and Fire Protection, Fire and Resource Assessment Program. California Department of Forestry and Fire Protection, Sacramento, CA. 69pp.

Risser, R.J. and Harris, R.R. 1990. *Mitigating impacts to riparian vegetation on western montane streams*. Chapter 9 In: J.A. Gore (ed.). Alternatives in regulated flow management. CRC Press, Inc., Boca Raton, FLA.

Stevens, D. 2002. *Biological evaluation of San Gorgonio River in Burnt Canyon, San Bernardino Mountains of southern California, for an assessment of potential impacts on sensitive species*. Report prepared for Southern California Edison, Rosemead, CA. 19 p.

**APPENDIX A**  
**PHOTOGRAPHS OF STUDY STREAMS**

Figure 1: Black Wheel Creek Above and Below Diversion

Figure 2a and 2b: Burnt Canyon Below and Above Diversion

Figure 3a and 3b: Burnt Canyon Riparian Vegetation

Figure 4: East Fork Riparian Conditions Above Diversion, 2005 and 2010

Figure 5: East Fork Riparian Conditions Below Diversion, 2005 and 2010

Figure 6: South Fork Riparian Conditions Above Diversion, 2005 and 2010

Figure 7: South Fork Riparian Conditions Below Diversion, 2005 and 2010

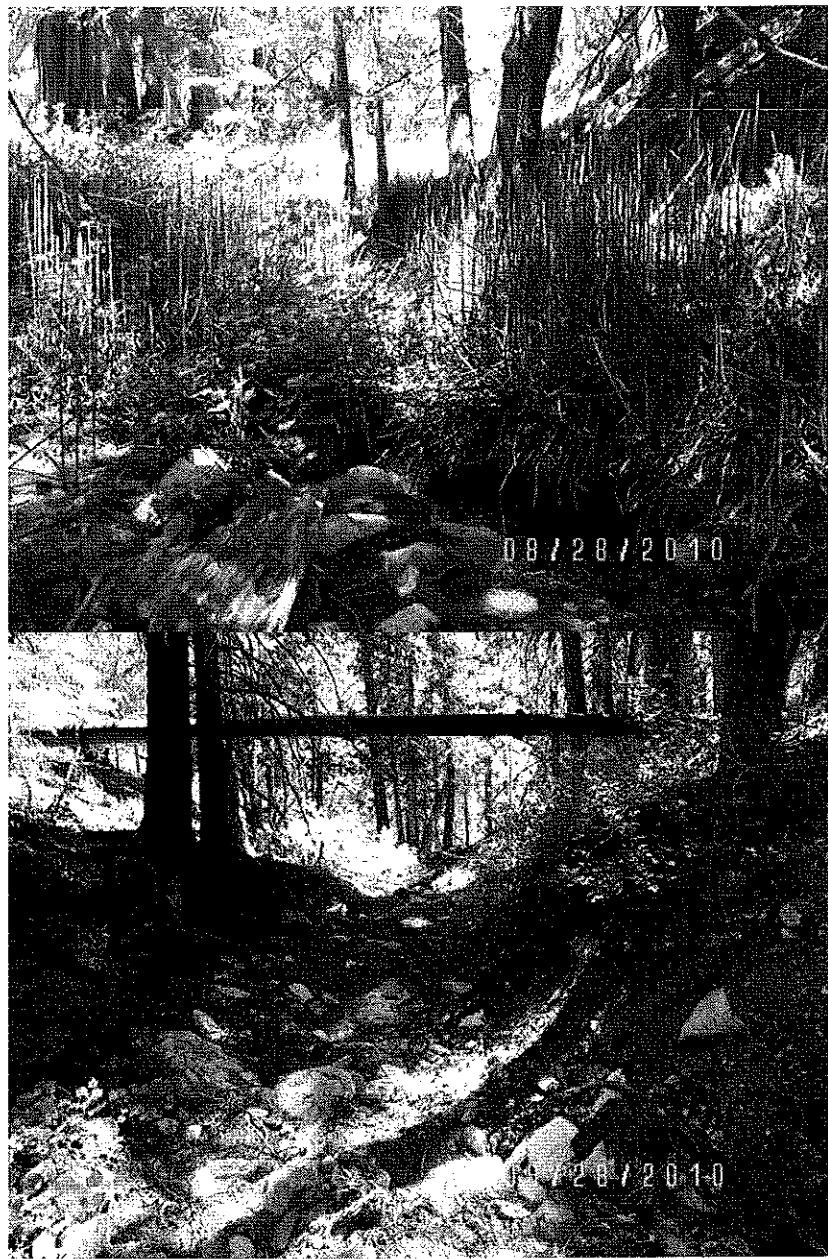


Figure 1: Black Wheel Creek above the diversion sustains a riparian community comprised of sedges, golden current and scattered alder trees (top picture). Flow and riparian vegetation was altogether absent below the diversion in 2003, 2005 and 2010.

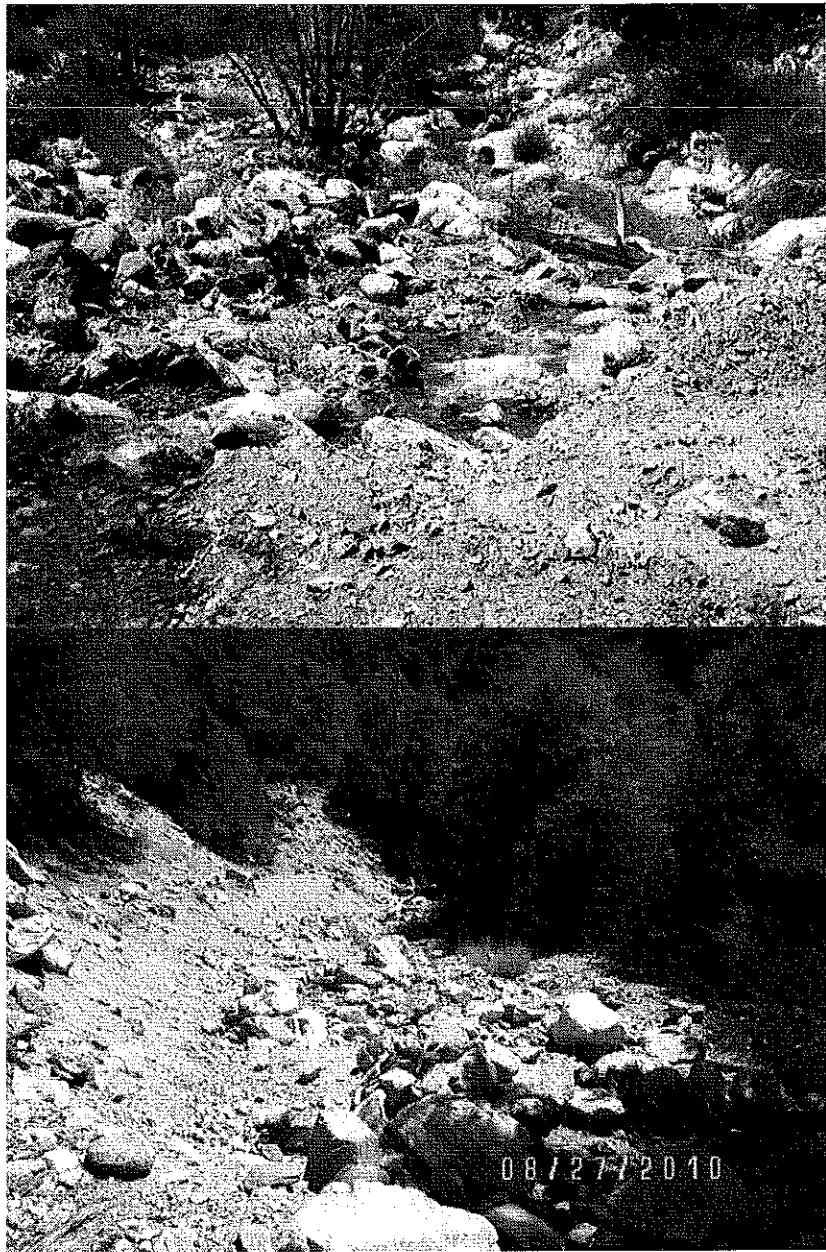


Figure 2a (above): Burnt Canyon/Sawmill Creek confluence below the diversion dam on Burnt Canyon. Flow was present in 2010 due to clogging of the diversion intake.

Figure 2b (below): Illustrating unstable slopes and riparian corridor along Burnt Canyon above the diversion dam. Extensive evidence of damaging floods was observed within the riparian corridor.

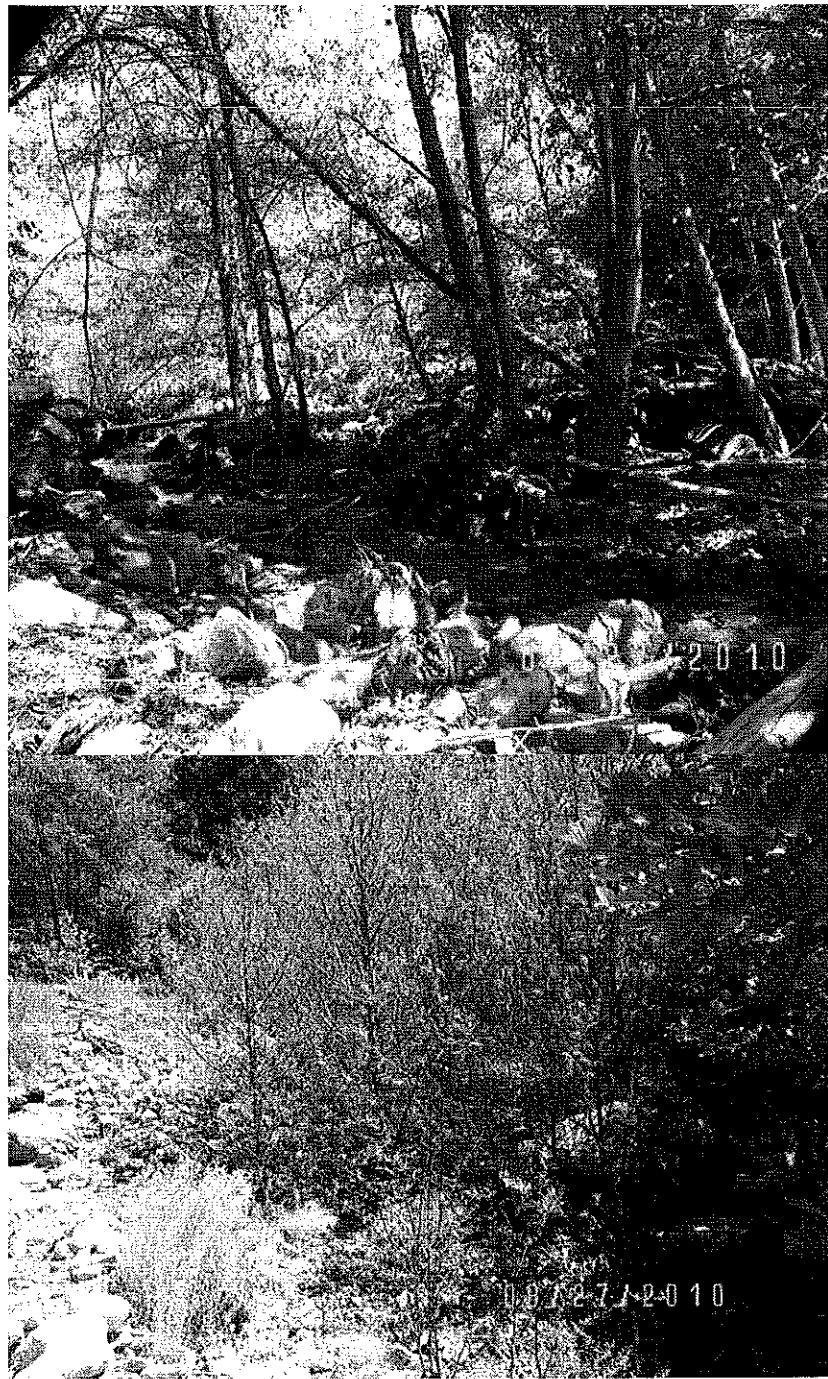


Figure 3a (above): The riparian corridor along Burnt Canyon has scattered large alder trees that pre-date the diversion of flow into the stream. Note extensive woody debris collected at base of trees due to flooding.

Figure 3b (below): There has been a burst of recent alder regeneration due to flow augmentation. Most of the young trees were completely defoliated by alder flea beetle in 2010



Figure 4: East Fork above the diversion in 2005 (top) and 2010 (bottom). In 2005 riparian vegetation was almost entirely absent, due to recent peak flows. In 2010 extensive channel changes were evident and alder regeneration was present along the stream. No mature alders or other riparian trees were noted either above or below the diversion on the East Fork.



Figure 5: East Fork below the diversion in 2005 (top) and 2010 (bottom). Although the pictures were not taken from the exact same location, the changes that have occurred since 2005 are representative of conditions below the diversion. The channel has aggraded and alder has recruited along the stream.

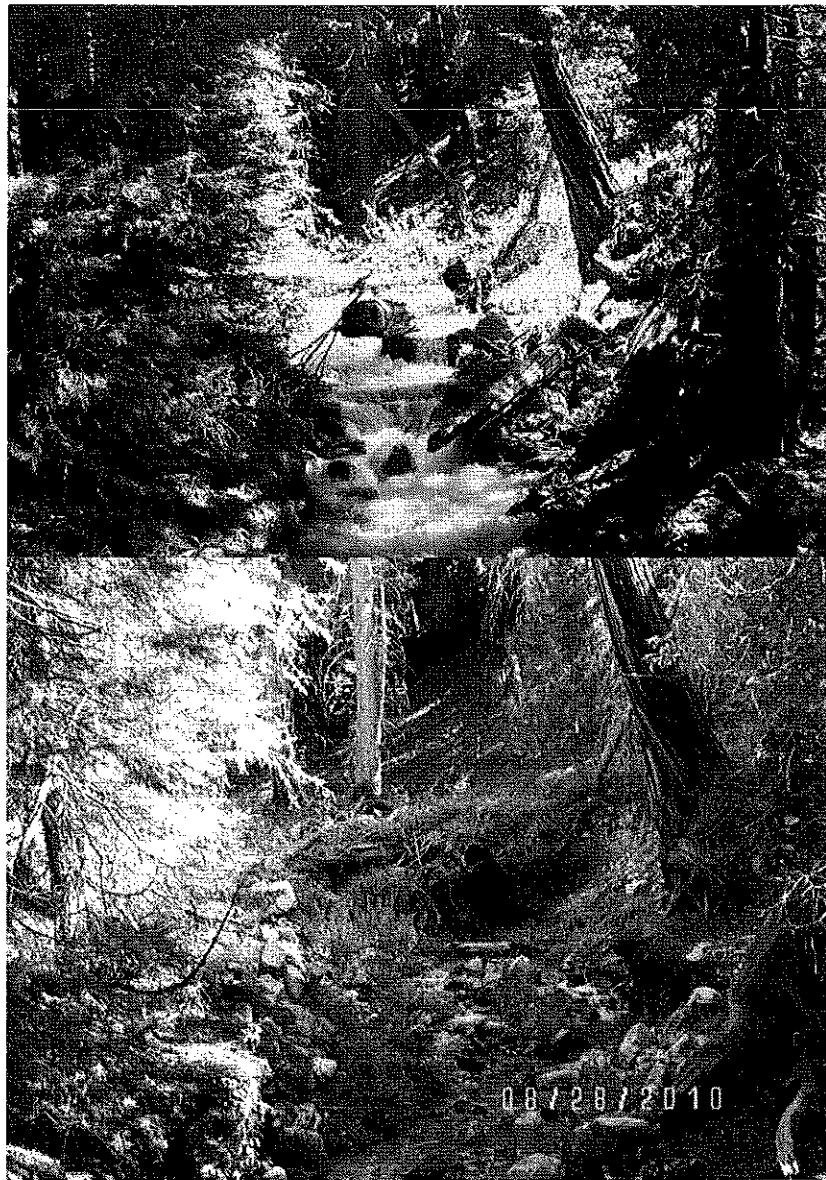


Figure 6: South Fork above diversion in 2005 (top) and 2010 (bottom). Channel widening and incision occurred as a result of peak flows since 2005. Several new debris jams were present and a number of streamside trees had toppled into the creek or onto adjacent slopes. Riparian vegetation conditions were generally similar at both times.



Figure 7: South Fork below diversion in 2005 (top) and 2010 (below). Although vegetation conditions did not change noticeably over these five years, recent flood events had caused changes in channel and floodplain geomorphology. Flow was less confined and the channel less incised in 2005. Note extensive deposits of woody debris and sediment present at both times.

Attachment C – Thomas Payne & Associates Fishery Reports 2005 and 2010



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## MEMORANDUM

Date: November 11, 2010  
To: Duane Burk, City of Banning  
From: Tom Payne, TRPA  
RE: Second San Gorgonio Field Trip

On October 4, 2010, I conducted another field site visit and inspection of the South and East forks of the South Fork Whitewater River in the vicinity of the Southern California Edison water diversions for FERC Hydroelectric Project No. 344. The site visit was intended to provide updated information on the fish and invertebrate populations of the area as a contribution to environmental portions of a license surrender application. Results of the site visit made in June 13, 2005, were documented in a memorandum dated August 24, 2005, and are appended for reference.

As before, the purpose of the site visit was to qualitatively sample fish and aquatic invertebrate populations, observe physical habitat conditions, and evaluate the effects of flow diversion on fishery resources. The diversion dams are located in a remote, rugged, high elevation area, generally only accessible during June through October because of snow cover. The dams can be reached via a rough four-wheel-drive dirt road. The stream channels upstream and downstream of the dams are accessible only on foot in limited areas, and include some very steep terrain. Public access to the area is limited all year round. There are locked gates on the access road and a U.S. Forest Service permit is required for entry.

The diversions are located at approximately 7100' elevation to the south of San Gorgonio Mountain in the San Bernardino National Forest (Figure 1). Streamflow in the two forks was much lower than in June of 2005 and many of the nearby smaller feeder tributaries were either dry or nearly dry. I visually estimated discharge at the South Fork Dam at 2-3 cubic feet per second (cfs) and at the East Fork Dam at less than 1 cfs. Unlike the last time, conditions were suitable for both fish sampling with a backpack electroshocker and macroinvertebrate sampling with a kicknet. The confluence of South Fork Whitewater Creek and Raywood Creek was also accessed by hiking down Raywood Creek from Raywood Flat. Information gathered during the two site visits, in combination with existing information, provide the basis for a professional evaluation of the aquatic resources and potential effects of continued streamflow diversion out of the Whitewater River watershed and over to the San Gorgonio Creek watershed through Burnt and Banning canyons.

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#### Stream Channel Evaluation

The South Fork Whitewater River at the South Fork Dam has changed considerably since the site visit in 2005 (Figure 2). Where before, the stream could be characterized as having “features... created by larger, low-mobility boulders, with frequent large woody debris creating jams, drops, and small scour pools, interspersed between longer stretches of boulder/cobble rapids”, now the stream channel is dominated by decomposed granitic sands, gravels, and cobbles. Except for the high scour line, unstable banks, and scarcity of riparian vegetation that is typical of the East Fork, the in-channel nature of the two streams is now very similar. There are virtually no pools deeper than a few inches, even below small cascades and falls created by woody debris, and nearly all interstitial spaces among the gravels and cobbles are completely filled with sand. Most of the South Fork is composed of very shallow riffle/run habitat.

The East Fork Whitewater River in the vicinity of the East Fork Dam is hardly different than in 2005 (Figure 3). The only significant observable change has been an increase in small riparian shrubs that have colonized the stream channel since the last large scour event. Most of the stream is very shallow sandy gravel run and riffle – water deeper than an inch or two is rare.

A return visit to the South Fork Whitewater River at the confluence with Raywood Creek revealed considerable physical stream channel difference as well. In 2005, the South Fork contained large boulders, small pools, falls, and pocket water habitat (Figure 4), in 2010 the condition of the stream channel is more similar to the current East Fork and South Fork near their respective diversion dams. In the intervening years, it is very apparent that at least one major flow event occurred which moved all river-rounded large boulders and scoured the channel several feet deeper while leaving coarse, angular, perched sediment deposits along the banks (Figure 5). Visual comparison of identifiable landmarks on the streambanks in the two figures illustrate these changes. Some small riparian shrubs are becoming established in places, but the stream consists entirely of shallow riffles and runs, with substrate dominated by decomposed granitic sands.

#### Aquatic Macroinvertebrate Sampling

Substrate upstream of the South Fork Whitewater (Elevation 7,114') and East Fork Whitewater (Elevation 7,186') dam diversions was sampled by kick net to obtain aquatic macroinvertebrates and assess the potential food base for the trout population (Figure 1). The substrate in the sample areas was composed primarily of coarse decomposed granitic sand and granite cobble/rubble. Kicknet sampling results were supplemented through use of a backpack electroshocker, where the stream was shocked and dislodged invertebrates captured with dipnets held just downstream. The electroshocker proved much more effective at capturing mayflies (Ephemeroptera) and caddis flies (Trichoptera) than the kicknet since the embedded granitic sand substrate was very difficult to dislodge.

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Seventy-one aquatic organisms were collected from the East Fork Whitewater River sample site, while 151 aquatic organisms were collected from the South Fork Whitewater River site (Table 1). Mayfly larvae dominated the aquatic macroinvertebrate community at both sample sites, accounting for almost 61% of the organisms in the East Fork and over 82% of the organisms in the South Fork.

Table 1. List of organisms collected from macroinvertebrate sampling at two sites in the South Fork Whitewater River basin, San Bernardino County, 4 October 2010.

Organism	Life stage	Number	
		East Fork	South Fork
<b><u>Ephemeroptera (mayflies)</u></b>			
<i>Baetis</i> sp.	Larvae	27	67
<i>Choroterpes</i> sp.	Larvae	4	---
<i>Drunella</i> sp.	Larvae	11	36
<i>Ironodes</i> sp.	Larvae	1	21
<b><u>Plecoptera (stoneflies)</u></b>			
<i>Hesperoperla</i> sp.	Larvae	---	2
<i>Taenionema</i> sp.	Larvae	---	1
<i>Zapada</i> sp.	Larvae	1	5
<b><u>Trichoptera (caddisflies)</u></b>			
<i>Ceratopsyche</i> sp.	Larvae	8	---
<i>Parapsyche</i> sp.	Larvae	3	2
<i>Rhyacophila</i> sp.	Larvae	8	---
<i>Rhyacophila</i> sp.	Pupae	1	---
<b><u>Homoptera (leafhoppers)</u></b>			
<i>Cicadellidae</i> <sup>1</sup>	Adult	---	2
<b><u>Coleoptera (beetles)</u></b>			
<i>Pyrrhalta</i> sp.	Larvae	1	---
<i>Pyrrhalta</i> sp.	Adult	1	---
<b><u>Hymenoptera (wasps, bees, &amp; ants)</u></b>			
<i>Formicinae</i> <sup>11</sup>	Worker	---	1
<b><u>Diptera (true flies)</u></b>			
<i>Simulium</i> sp. (deer fly)	Larvae	3	4
<i>Chironomidae</i> (midges)	Larvae	2	2
<i>Chironomidae</i> (midges)	Pupae	---	1
<b><u>Oligochaete (segmented worms)</u></b>			
<i>Lumbriculidae</i>	---	10	
	<b>Total</b>	71	154

1/ terrestrial insect not used in Biological Index or Water Quality Rating

The State Water Resources Control Board's California Streamside Biosurvey (CSB) protocols recommend a minimum sample size of one hundred macroinvertebrates for assessing water

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quality (Herbst et al. 2001). Despite the smaller than recommended count for the East Fork sample, a Biological Index of Water Quality was calculated for both sites (Tables 2 and 3).

Table 2. California Streamside Biosurvey invertebrate indicator groups and resulting biological index of water quality from macroinvertebrate samples collected in the East Fork of the South Fork Whitewater River at the San Gorgonio Project Diversion, 4 October 2010.

Invertebrate Group	Number	Percentage of Total	Abundance	Index Score
Mayflies	43	60.6%	dominant	4
Stoneflies	1	1.4%	rare	3
Caddisflies (non-netspinners)	9	12.7%	Common	5
Netspinning Caddisflies	11	15.5%	common	3
Other Water Beetles	2	2.8%	rare	2
Midges	2	2.8%	Rare	1
Black Flies	3	4.2%	Rare	1
<b>Total Biological Index of Water Quality Score</b>				<b>19</b>

Table 3. California Streamside Biosurvey invertebrate indicator groups and resulting biological index of water quality from macroinvertebrate samples collected in the South Fork Whitewater River at the San Gorgonio Project Diversion, 4 October 2010.

Invertebrate Group	Number	Percentage of Total	Abundance	Index Score
Mayflies	124	82.1%	dominant	4
Stoneflies	8	5.3%	common	5
Netspinning Caddisflies	2	1.3%	rare	2
Midges	3	2.0%	Rare	1
Black Flies	4	2.7%	Rare	1
Segmented worms	10	6.6%	Common	1
<b>Total Biological Index of Water Quality Score</b>				<b>14</b>

The calculated CSB index for the East Fork Whitewater River Site was 19 (Table 2). This index value equates to a water quality ranking of "Fair" or somewhat impaired (Table 4). The calculated CSB index for the South Fork Whitewater River Site was 14 (Table 2). This index value equates to a water quality ranking of "Poor" or degraded habitat that needs improvement (Table 4).

Table 4. SWRCB Provisional Water Quality Rating Scale (Herbst et al. 2001).

Biological Index	Rating	Indication
<15	Poor	Degraded water quality & habitat needing repair
15-20	Fair	Conditions improved but still somewhat impaired
21-25	Good	Stream health only slightly reduced
>25	Excellent	Best water quality and habitat for biological conditions

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This poor water quality ranking score noted for the South Fork site is somewhat surprising given the large numbers of mayfly larvae, which are considered sensitive organisms indicative of good water quality. The relatively low score appears to be a result of the excessive numerical abundance of mayfly larvae combined with the absence of other sensitive or intermediate macroinvertebrate species in the samples that were collected for examination. The ranking for this same site based upon a much smaller sample collected in June of 2005 was "fair". This earlier sample had far fewer mayfly larvae, but exhibited a more balanced presence of sensitive and intermediate macroinvertebrate species as a percentage of the total sample (Payne 2005).

#### Fish Relative Abundance Sampling

Backpack electroshocking was conducted in the East Fork Whitewater River upstream of the East Fork diversion dam, in the South Fork Whitewater River both upstream of the road crossing below the South Fork diversion dam and upstream of the dam itself, and within the South Fork sand settling structure. While at least 300 feet of stream were sampled at each location, no fish of any kind were captured or seen to avoid capture in any location. These results were expected for the East Fork, where no fish have been previously reported, but were not expected for the South Fork, where they have. The South Fork upstream of the road crossing had very little flow (less than 0.5 cfs), was perfectly clear, and provided ready access to the electroshocker. Streamflow was higher upstream of the dam (2-3 cfs) and was also clear and accessible. Water temperature was estimated to be in the low 50's on the Fahrenheit scale.

Multiple indicators were evident to demonstrate that the electroshocking equipment was functioning properly. As a precaution to deal with expected low conductivity in the clear alpine water, rock salt was added in handfuls immediately upstream of the sample area and allowed to dissolve and mix with streamflow prior to shocking. The backpack electroshocker unit (Smith-Root Model 12-A) was set to 60 hz and 600 volts and produced a standard output current of 0.35 milliamps. The unit generated the target audible pulsating tone which varied by distance between the anode net and the cathode rattail. A bare hand placed between the anode and cathode could detect current at a distance of over 6 feet and could not be held in the water at closer distances. And finally, the dip nets held downstream of the shocking field quickly accumulated aquatic macroinvertebrates (mostly mayflies and caddisflies) that were shocked into releasing their holds and entering the drift.

A possible reason for the lack of fish in the South Fork Whitewater River could be related to low seasonal water temperatures, since trout are known to seek shelter within coarse substrate when temperatures drop below about 4°C (39°F) during winter to avoid the effects of anchor ice (Chapman and Bjornn 1969). However, water temperature at the time of the site visit was not nearly this low, nor were there any apparent interstitial spaces within the substrate where a trout could effectively hide; the entire streambed was effectively sealed with sand.

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An attempt was made to sample the South Fork at the confluence of Raywood Creek by carrying the electroshocker down Raywood Creek canyon. However, an injury (broken fibula caused by a fall at the moment of arrival at the confluence) and waning daylight precluded the effort. Visual assessment of the South Fork (Figure 5) at an estimated flow of 1-2 cfs showed virtually no pool or deeper run habitat where adult trout could reside, and conditions were marginal at best for fry or juveniles. The poor quality of rearing habitat, in combination with the evidence for recent devastating scour flows, makes it unlikely fish would be present.

Literature Cited

Chapman, D.W., and T.C. Bjornn. 1969. Distribution of salmonids in streams, with special reference to food and feeding. Pages 153- 176 in T.G. Northcote, editor. Symposium on salmon and trout in streams. H.R. MacMillan Lectures in Fisheries. University of British Columbia, Vancouver, British Columbia. 388pp.

Herbst, D.B., A.Y. Feng, and D.E. Gregorio. 2001. The California Streamside Biosurvey, an introduction to using aquatic invertebrates as water quality indicators. Report prepared for the State Water Resources Control Board, Division of Water Quality, Clean Water Team Citizen Monitoring Program. Sacramento, CA.

Payne, T.R. 2005. San Gorgonio Field Trip. Memorandum written to Roy McDonald, Start California, dated August 25, 2005. Thomas R. Payne & Associates, Arcata, CA. 6pp.

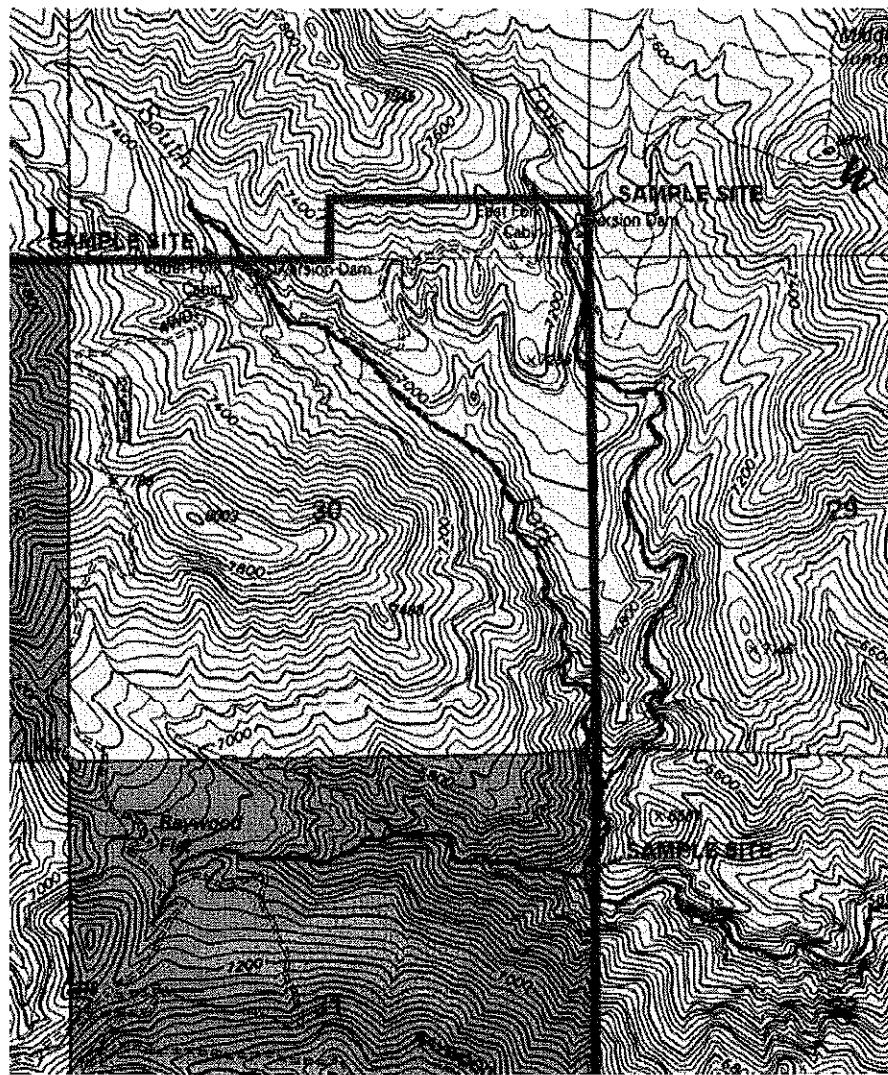


Figure 1. South Fork Whitewater River, East Fork Whitewater River, and Raywood Creek confluence with South Fork Whitewater River reference locations.



Figure 2. South Fork Whitewater River above project diversion in 2010.



Figure 3. East Fork Whitewater River above project diversion in 2010.

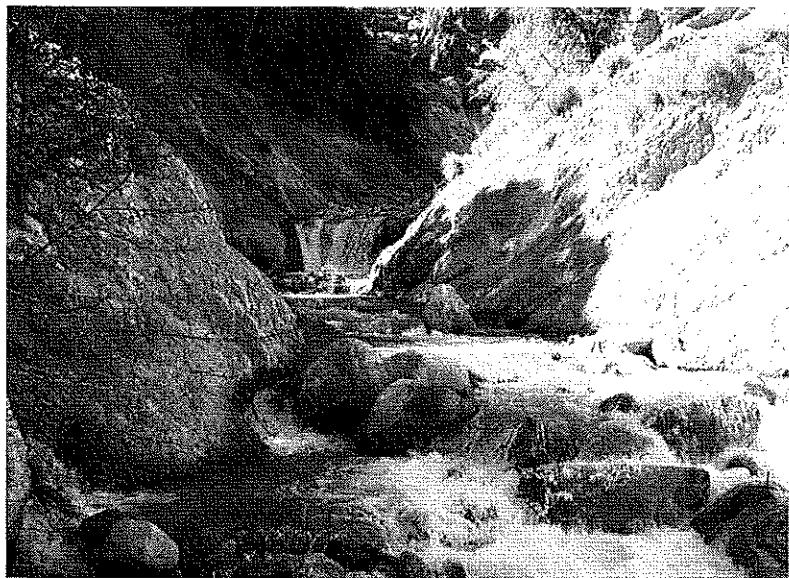
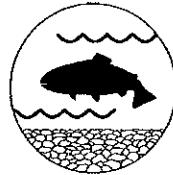


Figure 4. South Fork Whitewater River above Raywood Creek confluence in 2005.



Figure 5. South Fork Whitewater River above Raywood Creek confluence in 2010.



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## MEMORANDUM

Date: August 25, 2005  
To: Roy McDonald, Start California  
From: Tom Payne, TRPA  
RE: San Gorgonio Field Trip

On June 13, 2005, I conducted a field site visit and inspection of the South and East forks of the South Fork Whitewater River in the vicinity of the Southern California Edison water diversions for FERC Hydroelectric Project No. 344. The inspection was conducted in my capacity as a Certified Fisheries Scientist, with Bachelors and Masters degrees in fisheries biology and 35 years experience working with fish habitat assessment and modeling, population dynamics, and freshwater stream ecology.

The purpose of the site visit was to qualitatively sample fish and aquatic invertebrate populations, observe physical habitat conditions, and evaluate the effects of flow diversion on fishery resources. The diversion dams are located in a remote, rugged, high elevation area, generally only accessible during June through October because of snow cover. The dams can be reached via a rough four-wheel-drive dirt road. The stream channels upstream and downstream of the dams are accessible only on foot in limited areas, and include some very steep terrain. Public access to the area is limited all year round. There are locked gates on the access road and a U.S. Forest Service permit is required for entry.

The diversions are located at approximately 7100' elevation to the south of San Gorgonio Mountain in the San Bernardino National Forest (Figure 1). At the time of the site visit, flows in the two forks and smaller feeder tributaries were still quite high due to an exceptionally wet winter and persistent residual snow pack. I visually estimated discharge at the South Fork Dam at 10-12 cubic feet per second and at the East Fork Dam at 5-6 cfs. While these are not large flows, the high gradient (10-12%) and boulder/cobble substrate created abundant whitewater and near-zero visibility, even though the water itself was very clear. Conditions made it impossible to observe fish using the planned direct observation (mask and snorkel) techniques and high velocities and large substrate limited the ability to collect kick-net samples for invertebrates. Nevertheless, information gathered during the site visit, combined with existing information, provide the basis for a professional evaluation of the aquatic resources and potential effects of continued project operation and maintenance.

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#### Stream Channel Evaluation

The South Fork Whitewater River at the South Fork Dam is typical of many high gradient, high elevation mountain streams (Figure 2). Most channel features are created by larger, low-mobility boulders, with frequent large woody debris creating jams, drops, and small scour pools, interspersed between longer stretches of boulder/cobble rapids. Stream banks are very stable and support dense riparian vegetation that frequently extends well out over the stream. Overstory consists of mature alders and large standing pines that provide considerable shade to the water surface. The diversion dam pool is completely filled with granitic sand, gravel, and cobble.

The area in the vicinity of the East Fork Dam had a very different physical character (Figure 3). Where the South Fork streambed was stable, varied, and shaded by a mature riparian zone, the East Fork was highly unstable, uniform, and virtually devoid of riparian canopy. No pools or woody debris were present; the entire wetted channel could be characterized as a series of boulder/cobble riffle/rapids. A lateral scour zone was evident on both banks, with denuded rock and soils extending about 6-8 feet vertically (15-20 feet laterally) above the water surface. The underlying causes of the differences between the two streams may be related to natural geology, stream aspect and gradient, localized thunderstorms and upslope failures, or man-made influences of logging, road construction, or open range grazing.

The South Fork Whitewater River below the confluence of the East Fork was accessed by hiking down from Raywood Flat along what was presumably Raywood Creek, but is unnamed on the map. The drainage started out completely dry and slowly acquired flow from seeps and small tributaries. In one stretch, all flow went underground through an extensive boulder/rubble field, re-emerging after several hundred yards. By the time the tributary entered the South Fork, I estimated total flow at 3-4 cfs. The nature of the South Fork stream channel below the confluence was similar to the East Fork, but had more structure due to extensive bedrock features and large boulders (Figure 4 upstream, Figure 5 downstream). The channel evidently experiences very high peak discharges which, along with bank slippage, have removed most plants and soil for dozens to hundreds of feet up both banks. Riparian vegetation is limited to occasional patches of grasses and small bushes.

#### Aquatic Macroinvertebrate Sampling

Substrate within and immediately upstream of the South Fork Dam diversion pool was sampled by kick net to obtain aquatic macroinvertebrates and assess the potential food base for the trout population. The substrate in the sample area was composed primarily of coarse decomposed granitic sand and granite cobble/rubble. Approximately eight sites were sampled by placing the kick net below the sample area and disturbing the substrate (including roots and small woody debris) by hand or shovel.

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Only twenty-one organisms were collected (Table 1), including two terrestrial adults (a beetle and a snipe fly). This low yield of organisms for the number of samples taken is believed to be a function of the early season and lack of colonization following high winter rains and heavy snowmelt. Considering the abundant trout populations documented previously, the aquatic food base must be normally quite high. The State Water Resources Control Board's California Streamside Biosurvey (CSB) protocols recommend a minimum sample size of one hundred macroinvertebrates for assessing water quality (Herbst et al. 2001). Despite the small sample size, a Biological Index of Water Quality was calculated at 19 (Table 2). This index value equates to a ranking of "Fair" and an indication of "Conditions improved but still somewhat impaired" (Table 3), which is consistent with the early season and prior flow effects.

Table 1. List of organisms collected from multiple kick net samples in the South Fork Whitewater River at the San Gorgonio Project Diversion, 13 June 2005.

Organism	Life stage	Number
<u>Ephemeroptera (mayflies)</u>		
<i>Ameletus</i> sp.	Larvae	2
<i>Baetis</i> sp.	Larvae	1
<i>Isonedes</i> sp.	Larvae	1
<u>Plecoptera (stoneflies)</u>		
<i>Hesperoperla</i> sp.	Larvae	3
<i>Yoraperla</i> sp.	Larvae	3
<u>Trichoptera (caddisflies)</u>		
<i>Rhyacophila</i> sp.	Larvae	1
<u>Coleoptera (beetles)</u>		
Tenebrionidae <sup>1/</sup>	Adult	1
<u>Diptera (true flies)</u>		
<i>Dicranota</i> sp. (crane fly)	Larvae	1
<i>Glutops</i> sp.	Larvae	1
<i>Symporomyia</i> sp. (snipe fly)	Adult <sup>2/</sup>	1
Chironomidae (midges)	Larvae	3
<u>Oligochaete (segmented worms)</u>		
Lumbriculidae		3
	<b>Total</b>	<b>21</b>

1/ terrestrial insect not used in Biological Index or Water Quality Rating

2/ adult non-aquatic life stage not used in Biological Index or Water Quality Rating

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Table 2. California Streamside Biosurvey invertebrate indicator groups and biological index of water quality from multiple kicknet samples in the South Fork Whitewater River at the San Gorgonio Project Diversion, 13 June 2005.

Invertebrate Group	Number	Percentage of Total	Abundance	Index Score
Mayflies	4	21%	common	5
Stoneflies	6	32%	dominant	4
Caddisflies (non-netspinners)	1	5%	common	5
Crane flies & other Diptera	2	10%	common	3
Midges	3	16%	common	1
Segmented worms	3	16%	common	1
<b>Total Biological Index of Water Quality Score</b>				<b>19</b>

Table 3. SWRCB Provisional Water Quality Rating Scale (Herbst et al. 2001).

Biological Index	Rating	Indication
<15	Poor	Degraded water quality & habitat needing repair
15-20	Fair	Conditions improved but still somewhat impaired
21-25	Good	Stream health only slightly reduced
>25	Excellent	Best water quality and habitat for biological conditions

Gradient and Access

The San Bernardino Mountains are very steep and rugged, and this topography is reflected in the gradient and access to the upper reaches of the South Fork Whitewater River. There are only three known points of access, one via the private diversion dam road at 7100' elevation about 8½ miles from the North Fork confluence, one at the 5 mile mark by pack trail over the ridge crest from Millard Canyon to the south, and one at a jeep trail from the east about a half mile from the river near the confluence. Access down from the diversion dam road at Raywood Flat is possible, but not likely to be attempted by the casual hiker or fisherman. Gradient on the alluvial outwash above the confluence starts at an already-steep 5.3 percent and increases from there. By mile, the gradient continues at 6.4, 6.0, 7.6, 6.8, 7.6, 9.8, 12.1, and 9.1 (last half mile) percent.

The combination of restricted access, steep unstable canyon walls, and high channel gradient severely limit the ability of many fishermen to utilize the fishery resources of the South Fork Whitewater River. At least in the vicinity of Raywood Creek (and probably many more places), the South Fork is inaccessible for any distance over a few hundred feet, primarily due to waterfalls without any means for bypass. From the eastern jeep trail, a hike of three or four miles up the South Fork canyon would be necessary in most years to reach flowing water above the alluvial fan. A short reach of the river near the five mile mark is accessible by a three mile trail from Millard Canyon, but it is unknown whether conditions there would be suitable for trout during summer. Trout are abundant above the diversion on the South Fork and could be fished by those with permission to use the 4WD access road from Banning Canyon.

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#### Fisheries Assessment

Anecdotal reports indicate that rainbow trout can be readily captured by hook and line during suitable conditions upstream of the South Fork Dam. Electrofishing conducted by California Department of Fish and Game (CDFG) in 1995 and 1996 found trout to be abundant in 150 meters of stream above the diversion (data sheets attached). Most of these fish were between 4 and 7 inches, but one was over 9 inches, which is likely to be near the upper limit of the potential size range for trout at this elevation. No sampling data from below the diversion were reported, although stream flow measurements by CDFG showed 1.68 cfs above and 0.37 cfs below. Flow below the dam originates from leakage and a small spring and is likely to provide sufficient physical habitat to support trout. No other fish species have been captured or reported in the diversion area of the South Fork of the South Fork Whitewater River.

No fish of any kind have been seen in the diversion area of the East Fork of the South Fork Whitewater River, either by observation, capture by fishermen, or sampling by electrofishing. No fish were observed in the South Fork Whitewater River downstream of the confluence of the East and South forks of the South Fork during the site visit, but some were assumed present due to their occurrence in the South Fork near the diversion and the probability of displacement by high flows during storms. Further down in the canyon, trout populations are probably limited by increasing water temperatures, low food supply (lack of terrestrial input), and loss of surface flow to alluvial groundwater. Access for fishermen is extremely restricted by the steep gorge terrain from the confluence to the mouth of the canyon near the North Fork Whitewater River.

The specific history of rainbow trout at this location and elevation (7000') is unknown to me, but the fish are likely to have been planted with hatchery stock within the last 100 years, as were many other high elevation lakes and streams in California (Moyle 2002). In summary:

- Rainbow trout are abundant above the dam on the South Fork of the South Fork Whitewater River
- No fish are present in the East Fork of the South Fork Whitewater River
- The East Fork of the South Fork Whitewater and the South Fork Whitewater below the confluence with the East Fork have unstable channels that lack riparian vegetation and are frequently scoured by high flows
- Both tributaries are very high gradient (>5%) and fishing access is extremely limited

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#### Conclusions

My understanding is that the two diversions on the tributaries of the South Fork Whitewater River are to be maintained as part of a water supply and will continue to divert flow to the adjacent watershed. Existing fishery resources consist of permanent rainbow trout populations in the South Fork of the South Fork Whitewater River upstream of the diversion, no fishery resources in the East Fork of the South Fork Whitewater River, and a variable rainbow trout

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population between the South Fork of the South Fork diversion down to some point upstream of the North Fork Whitewater River confluence (this point would primarily vary with water year type). The trout populations appear to be self-sustaining (multiple year classes which indicate natural spawning) and do not rely on supplemental hatchery plants.

If the objective of environmental permitting for continued project operation is maintenance of existing fishery conditions, the only requirement would be continuation of the instream flow of about 0.37 cfs, measured approximately 100 yards below the South Fork of the South Fork diversion. The upstream trout populations in the South Fork of the South Fork would remain unchanged and accessible to fishermen, the fishless East Fork of the South Fork would likely provide aquatic invertebrates as food to any trout below the confluence during wetter years, and the mostly-inaccessible portions of the South Fork of the South Fork and the South Fork itself would continue to support intermittent trout populations down through the canyon.

#### Literature Cited

Herbst, D.B., A.Y. Feng, and D.E. Gregorio. 2001. The California Streamside Biosurvey, an introduction to using aquatic invertebrates as water quality indicators. Report prepared for the State Water Resources Control Board, Division of Water Quality, Clean Water Team Citizen Monitoring Program. Sacramento, CA.

Moyle, P.B. 2002. Inland Fishes of California. University of California Press, Berkeley and Los Angeles, California. 502 pp.

**EXHIBIT G**

**NOTICE OF PREPARATION (NOP) FILING**

**AUGUST 15, 2013**



# City of Banning

## Public Works Department

August 15, 2013

To: Responsible Agencies and Other Interested Parties  
From: City of Banning, Lead Agency

SUBJECT: Notice of Preparation of a Draft Environmental Impact Report

The City of Banning will be the Lead Agency and will prepare an Environmental Impact Report (EIR) for the project identified below. Members of the public and other interested parties are invited to submit written and/or verbal comments. For agencies, we need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the EIR prepared by the City of Banning when considering your permit or other approval for the project.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date but not later than October 1, 2013.

Please send your response to Duane Burk at the address shown below. For agency responses, we will need the name for a contact person in your agency.

Project Title: Removal of Water Supply Pipeline Serving the Community of Banning Heights, California

Project Applicant: Southern California Edison Company, under an order issued by the San Bernardino National Forest on June 14, 2013

Project Description: The San Bernardino National Forest has ordered Southern California Edison Company to remove approximately 1,100 feet of an existing pipeline located on Forest Lands in Burnt Canyon in the vicinity of the San Gorgonio River, about three miles north of the community of Banning Heights and five miles north of the City of Banning. The pipeline is the sole source of water supply for the community of Banning Heights and removing the 1,100 foot section of pipe will curtail all water deliveries to the community on or before January 1, 2014.

Potential Impacts: Curtailing all water deliveries to the community of Banning Heights would be expected to have significant, unavoidable public health and safety impacts, along with significant impacts on population and housing as a result of diminished property values. In addition, the pipeline crosses a stream and there is a potential for construction-related impacts on instream resources.

Associated Permits: The proposed construction work in and around the pipeline stream crossing will likely require three permits: a Stream Bed Alteration Agreement with the State Department of Fish and Wildlife, Section 401 Water Quality Certification from the Regional Water Quality Control Board, and a

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stream crossing permit from the U.S. Army Corps of Engineers. All three of these permits require compliance with the California Environmental Quality Act and the City's Draft Environmental Impact Report will be used in these agency's decision-making processes.

**Related Project:** In addition to ordering the removal of the 1,100 feet of pipeline, the San Bernardino National Forest has proposed to the Federal Energy Regulatory Commission the permanent closing and removal of all the water supply facilities associated with the City's Whitewater Flume Project. This federal proposal is currently being considered by the Federal Energy Regulatory Commission as a part of Southern California Edison Company's proposal to surrender their license to generate power from the City's project. This federal proposal would permanently terminate water deliveries to the community of Banning Heights and would terminate a component of the City's groundwater recharge program. It would also violate Banning Heights' and the City's pre-1914 appropriative water rights. The Draft Environmental Impact Report for the removal of the Burnt Canyon water supply pipeline may be expanded in the future to include this federal proposal.

**Public and Agency Scoping Meetings:** Two scoping meetings will be held to receive verbal comments on the proposed project and on the information and analyses that should be contained in the Draft Environmental Impact Report, as follows:

- 7 pm to 9 pm, Wednesday, September 11, 2013; and
- 2 pm to 4 pm, Thursday, September 12, 2013.

A meeting on the related federal project will be hosted by the Federal Energy Regulatory Commission from 10 am to 1 pm on Thursday, September 12, 2013, and members of the public, agencies, and other parties interested in the proposed project are encouraged to also attend this meeting.

**Meeting Location:** All three meetings will be held in the Banning City Hall Council Chambers, 99 East Ramsey St., Banning, CA 92220

Signed:



Duane Burk  
Director of Public Works  
City of Banning  
99 East Ramsey St.  
Banning, CA 92220  
(951) 922-3130

Via Certified Mail – Return Receipt Requested

State Clearinghouse

1400 Tenth Street

Sacramento, CA 95814

\*\*\* Please send 12 copies to the State Clearinghouse along with a memo saying the NOP has already been sent to the following list of agencies and individuals.

U.S. Army Corps of Engineers

5900 La Place Court, Suite 100 Carlsbad, CA 92008

Attention: Therese Bradford

California Public Utilities Commission

505 Van Ness Ave

San Francisco, CA 94102-3214

Riverside County Planning Department

County Administration Center

4080 Lemon St.

Riverside, California 92501

Forest Supervisor

San Bernardino National Forest

602 S. Tippecanoe Ave.

San Bernardino, CA 92408

State Water Resources Control Board

1001 I Street

Sacramento, CA 95814

Attention: Michelle Lobo

Department of Fish and Wildlife

3602 Inland Empire Blvd.

Suite C-220

Ontario, CA 91764

Attention: Jeff Brandt

Regional Water Quality Control Board

Colorado River Basin Region

73-720 Fred Waring Drive, Suite 100

Palm Desert, CA 92260

Attention: Jay Mirpout

Henry Martinez

Southern California Edison Company

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Hydro Division  
300 N. Lone Hill Ave.  
San Dimas, CA 917731741

Via Regular Mail

Kelly O'Donnell  
Attorney  
Southern California Edison Company  
PO Box 800  
Rosemead, CA 91770-0800

Steve Stockton ✓  
1906 Canyon Road  
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Stephan Mascaro ✓  
P.O. Box 231148  
Encinitas, CA 92023-1148

Jeff Davis ✓  
General Manager  
San Gorgonio Pass Water Agency  
1210 Beaumont Avenue  
Beaumont, CA 92223

Richard Simmons, President ✓  
Banning Heights Mutual Water Co  
7091 Bluff Street  
Banning Heights, CA 92220

John G. McClendon ✓  
Leibold McClendon & Mann, P.C.  
23422 Mill Creek Drive, Suite 105  
Laguna Hills, CA 92653

Alan Hamdorf ✓  
43541 Hale Lane  
Banning, CA 92220

Matt Knox  
District Director  
Col. Paul Cook (Ret.)  
Member of Congress  
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Apple Valley, CA 92307

Jan Leja  
Field Representative  
Col. Paul Cook (Ret.)  
Member of Congress  
34932 Yucaipa Blvd.  
Yucaipa, CA 92399

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**EXHIBIT H**

**ORDER GRANTING A REHEARING FOR FURTHER**

**CONSIDERATION FROM FERC**

**AUGUST 21, 2013**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

City of Banning, California

Project No. 14520-001

ORDER GRANTING REHEARING FOR  
FURTHER CONSIDERATION

(July 30, 2013)

Rehearing has been timely requested of the Commission's order issued on June 5, 2013, in this proceeding. *City of Banning, California*, 143 FERC ¶ 62,170 (2013). In the absence of Commission action within 30 days from the date the rehearing request was filed, the request for rehearing (and any timely requests for rehearing filed subsequently)<sup>1</sup> would be deemed denied. 18 C.F.R. § 385.713 (2013).

In order to afford additional time for consideration of the matters raised or to be raised, rehearing of the Commission's order is hereby granted for the limited purpose of further consideration, and timely-filed rehearing requests will not be deemed denied by operation of law. Rehearing requests of the above-cited order filed in this proceeding will be addressed in a future order. As provided in 18 C.F.R. § 385.713(d), no answers to the rehearing requests will be entertained.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>1</sup> See *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange, et al.*, 95 FERC ¶ 61,173 (2001) (clarifying that a single tolling order applies to all rehearing requests that were timely filed).

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**EXHIBIT I**

**NOTICE FROM FOREST SERVICE TO**

**SOUTHERN CALIFORNIA EDISON GRANTING A ONE YEAR**

**EXTENSION FOR THE REMOVAL ORDER**

**SEPTEMBER 11, 2013**

Authorization ID: SGD4116A  
Contact ID: SO CAL ED  
Expiration Date: 09/12/2014  
Use Code: 915

FS-2700-25 (10/09)  
OMB NO. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE**  
Forest Service  
**TEMPORARY SPECIAL - USE PERMIT**  
(FSH 2709.11, sec. 54.6)

**AUTHORITY:**

**FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976**

SOUTHERN CALIFORNIA EDISON (SCE), hereinafter called the Holder, is hereby authorized to use, subject to the terms and conditions of this permit, National Forest System land identified within the unit area and described as NW1/4NW1/4 Sec. 2, T. 2 S., R. 1 E., and Sec.36, T.1S., R.1.E., SAN BERNARDINO MERIDIAN, as shown on the attached Exhibit(s) . This authorization covers approximately 2 acres and/or 0 miles and is issued for the purpose of:

THE CONTINUED OPERATION AND MAINTENANCE OF A TEMPORARY ABOVE GROUND, 8 INCH PIPELINE, AS DESCRIBED IN FIGURE 1. THIS IMPROVEMENT IS PART OF A MUNICIPAL WATER CONVEYANCE SYSTEM AND IS ASSOCIATED WITH A FAILED FERC HYDRO PROJECT SCHEDULED FOR DECOMMISSIONING. IMPROVEMENTS ARE LOCATED ON BOTH PRIVATE AND PUBLIC LANDS. THE PIPELINE IS APPROXIMATELY 3740 FEET IN TOTAL LENGTH AND ORIGINATES AT A POINT OF DIVERSION ON PRIVATE LAND IN SECTION 35. THE PERMITTED PORTION OF THE PIPE ON NATIONAL FOREST IS APPROXIMATELY 1100 FEET IN LENGTH AND IS STABILIZED WITH CONCRETE ANCHORS. THE PERMIT BOUNDARY BEGINS IN THE VICINITY OF THE NW CORNER OF SECTION 2,T. 2S., R. 1E., THEN TRAVERSES SOUTHERLY AND ENTERS POWERHOUSE #1. IN ADDITION TO THE ABOVE GROUD PIPELINE, THE PERMITTED AREA ALSO INCLUDES THE OVERLAND FLOW AREA IN SECTION 36 TO THE EAST OF THE DIVERSION POINT, WHICH IS LOCATED ON PRIVATE LAND, INCLUDING 10 FEET EITHER SIDE OF THE HIGH WATER MARK IN BURNT CANYON CREEK AND 10 FEET EITHER SIDE OF THE OVERLAND DIVERSION FLOW STARTING FROM RAYWOOD FLAT DOWN TO BURNT CANYON CREEK. BOTH OF THESE AREAS ARE LOCATED IN THEIR ENTIRETY IN SECTION 36 OF T.1S., R.1.E.

SCE IS REQUIRED TO PROVIDE THE FOREST SERVICE AN ABANDONMENT AND RESTORATION PLAN FOR THE ABOVE GROUND PIPELINE AND CEMENT ANCHORS BY JANUARY 2, 2014. THE PLAN WILL DESCRIBE IN DETAIL HOW AND WHEN ABANDONMENT AND RESTORATION WILL OCCUR AND HOW THE AREA WILL BE RESTORED TO NATURAL CONDITIONS. THE PLAN WILL ALSO INCLUDE THE REMOVAL OF ALL DEBRIS LOCATED ON FEDERAL LAND IN T.1S., R1E, SECTION 36 BELOW FLOWLINE #1 IN AND ABOVE BURNT CANYON CREEK. THE AREA WHERE WATER WAS DIVERTED FROM RAYWOOD FLAT DOWN TO BURNT CANYON CREEK WILL ALSO NEED TO BE RESTORED TO NATURAL CONDITIONS WHERE EROSION HAS OCCURRED.

**TERMS AND CONDITIONS**

1. Use under this permit shall begin on 09/12/2013 and end on 09/12/2014. The permit shall not be extended.
2. The fee for this use is \$99.64. It shall be paid in advance and is not refundable.
3. The holder shall conduct the authorized activities according to the attached approved plans and specifications, Exhibit(s).
4. The holder shall not install any improvements not specifically identified and approved above.

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**EXHIBIT J**

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT  
WITH ROY MCDONALD, ENVIRONMENTAL AND  
REGULATORY CONSULTANT**

**Amendment to Contract P01-13**

Contract No.	<u>P01-13</u>
Amendment No.	<u>#1</u>
Effective Date	<u>September 9, 2013</u>

**Amendment #1**

In accordance with Article 16.6 of the Professional Services Agreement dated January 8, 2013 ("Agreement") between City of Banning, California ("CLIENT") and Roy McDonald ("CONSULTANT"), this amendment sets forth additional services to be performed, the schedule for the additional services, and CONSULTANT's compensation for the additional services, as follows:

**1. Services to be performed:**

The CONSULTANT will assist the CLIENT in implementing its responsibilities under its Agreement with the Southern California Edison Company (SCE) on the Whitewater Flume Restoration Project, including providing information and recommendations for actions to be performed by the CLIENT and its partners, Banning Heights Mutual Water Company (BHMWC), and San Gorgonio Pass Water Agency (Pass Agency); and assisting the CLIENT in carrying out the following tasks:

- a. Assist the CLIENT by evaluating current field conditions with respect to riparian habitat and aquatic resources and present the findings to FERC, Forest Service, the public, and other interested parties during a FERC technical meeting.
- b. Assist the CLIENT in negotiating a settlement agreement with the Forest Service and in obtaining a related Long-Term Easement (LTE) for a water-supply-only project from the Forest Service pursuant to September 12, 2013, direction from the FERC. Assist the CLIENT in information gathering and analyses related to the effects of minimum flow releases on riparian habitat and aquatic resources, and the impacts of various flow release scenarios on water supply. This Amendment #1 covers the development of several minimum flow scenarios based on air photograph interpretation and existing stream profile data, and includes evaluating the effects of the scenarios on water supply. It includes the possibility of one field visit by CONSULTANT on the lower reaches of the Whitewater River to ground truth an assessment of the effects of the selected flow scenario on riparian habitat and related resources.
- c. Assist the CLIENT in conducting two public scoping meetings/workshops in connection with a CEQA review of the Forest Service pipeline removal order and/or public involvement in developing a settlement agreement with the Forest Service. Assist the CLIENT in presenting information and the results of analyses on the effects of minimum flow releases on riparian habitat, aquatic resources, and water supply.
- d. Assist the CLIENT in carrying out the CEQA NOP process and in developing a scope of work for a DEIR based on public and agency comments. Provide recommendations on technical and strategic issues related to the CEQA process for Forest Service orders on pipeline removal and full facility removal. Assist the CLIENT in filing CEQA-related notices and determinations.

- e. Assist the CLIENT in reviewing and evaluating agency and other interested party comments on the CLIENT's Draft Application for License, in evaluating the strategic options, and in determining how and when to proceed on the next steps toward obtaining a FERC power license.
- f. Assist the CLIENT in filing progress reports and other relevant information and analyses with the FERC and in reviewing and analyzing documents filed with FERC by others in connection with SCE's surrender application and the CLIENT's license application.
- g. Support the CLIENT in other matters associated with the Whitewater Flume Restoration to the extent such supporting services can be performed within the budget identified in 3, below.

2. **Time of performance:**

The services set forth in this Amendment #1 are to be performed during the period, September 9, 2013, through December 31, 2013.

3. **CONSULTANT's Compensation:**

The services set forth in this Amendment #1 will not exceed \$88,435, including all professional time and associated expenses. The break down is expected to be as follows:

Roy McDonald

Professional Time: 242 hours @ \$172.00 per hour = \$41,624

Associated Expenses: Incidental Expenses = \$726. Travel Expenses = \$1,474

Total McDonald = \$43,825

Dr. McDonald's time will be billed at \$172.00 per hour. Travel including airfares, mileage at \$0.50 per mile, rental cars, and hotels, will be billed at cost with no mark-up. Incidental expenses, including such things as computer use, supplies, and telephone will be covered under a fee of \$3.00 per each hour of Dr. McDonald's time. Dr. McDonald does not charge for meals during authorized travel. Travel time that causes the workday to exceed eight hours is charged at  $\frac{1}{2}$  the normal rate, or \$86.00 per hour and incidental expense fees are not charged for these hours.

Specialists

Several specialists will assist Roy McDonald in connection with tasks a, b, and c of Amendment #1. Roy McDonald will bill their services and related expenses to the City at cost with no mark up. These specialist services are expected to cost \$44,610, as described in the following.

These specialist services are critical to crafting a reasoned, technically defensible minimum flow release proposal for the SBNF LTE application and to evaluating the effects of minimum release scenarios on water supply. The services are also necessary to communicate the technical issues to the public, elected officials, SBNF, and other interested parties.

Richard R. Harris – Riparian Habitat (\$12,568)

Professional Time: 62 hours @ \$160 per hour = \$9,920

Associated Expenses: \$2,648

Total: \$12,568

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Mike Liquori – Geomorphology (\$7,000)

Professional Time: 46 hours @ \$142 per hour = \$6,532  
Associated Expenses: \$468  
Total: \$7,000

Thomas R. Payne – Aquatic Ecology (\$17,420)

Professional Time: 56 hours @ \$240 per hour = \$13,440  
Associated Expenses: \$3,980  
Total: \$17,420

Michael J. Preszler – Hydrology/Water Supply (\$7,622)

Professional Time: 40 hours @ \$185.00 per hour = \$7,400  
Associated Expenses: \$222  
Total: \$7,622

All other terms and conditions of contract P01-13 remain unchanged.

**CLIENT**

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Signature

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Name (Printed or Typed)

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Date

**CONSULTANT**

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Signature

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Roy McDonald

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Name (Printed or Typed)

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Date

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